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Supreme Court, U.S.  
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No. \_\_\_\_\_

JOSEPH F. SAPNIOL, JR.  
CLERK

In The  
Supreme Court of the United States  
October Term, 1989

— ♦ —  
SHELBY COUNTY SHERIFF AND  
MAYOR OF SHELBY COUNTY,  
TENNESSEE,

*Petitioners,*

v.

LARRY LEACH,

*Respondent.*

— ♦ —  
PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

— ♦ —  
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## QUESTIONS PRESENTED

### I

Whether a municipality, in an official capacity suit under 42 U.S.C. 1983, can be held liable for deliberate indifference to the medical needs of a prisoner when it should have known of an unconstitutional custom or policy without any governmental officials having actual or constructive knowledge of the abuse.

### II

Whether a municipality, in an official capacity suit under 42 U.S.C. 1983, can be held liable for its failure to investigate and punish, and hence ratify, an unconstitutional policy or custom when its officials had no actual or constructive knowledge of the acts that comprised the policy or custom, and when those acts were done by persons not under the control of, or employed by the municipality.

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

---

Petitioners, the Shelby County Sheriff and the Mayor of Shelby County, Tennessee, respectfully pray that a Writ of Certiorari issue to review the Decision and Opinion of the United States Court of Appeals for the Sixth Circuit filed on December 20, 1989.

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**OPINIONS BELOW**

The decision of the United States District Court for the Western District of Tennessee, Western Division, is not reported. It was filed on September 23, 1987. The

Memorandum and Order Granting Judgment to Plaintiff appears at Appendix A. The decision of the United States Court of Appeals for the Sixth Circuit was entered on December 20, 1989. It is reported at 891 F.2d 1241 (6th Cir. 1989), and appears at Appendix B. An Order Denying a Rehearing En Banc was filed on February 8, 1990. This Order has not been reported. It appears at Appendix C.

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## JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was entered on December 20, 1989. An order denying a rehearing *en banc* was entered on February 8, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

42 U.S.C. 1983 provides, in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or other immunities secured by the Constitution and laws, shall be liable to

the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . ."

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### STATEMENT OF THE CASE

In 1982, Larry Leach was shot by his victim while committing a rape. He was rendered paralyzed from the chest down. On July 30, 1983, he was found guilty of aggravated rape and kidnapping, and immediately taken to the Shelby County, Tennessee, jail to await sentencing. *Infra*, at 1a-2a. A complaint under 42 U.S.C. 1983, was filed in the United States District Court for the Western District of Tennessee complaining that Leach's treatment while in the Shelby County Jail violated his Eighth Amendment right to be free from cruel and unusual punishment. The Shelby County Sheriff and the Mayor of Shelby County were named as defendants, in their official capacities only. The matter was tried before the Honorable Odell Horton, Chief Judge, without a jury.

The trial court found that Leach's treatment during his first ten days in the jail was deplorable. During that time, his mother contacted the Tennessee Department of Human Services to complain about her son's treatment. *Infra*, at 4a, 9a. William Sellari, an employee of the Department, made an investigation, including an on site inspection with interviews. He found and prepared a report finding that Leach and the other inmates in his living area had been recently bathed, that the living area was clean, that Leach had no bed sores or ulcers on his body, and that Leach had not complained of any mistreatment. *Infra*, at 24a. After this visit, Leach received

humane treatment. When he left the jail some weeks later, however, there was evidence that he had sores on his ankles and buttocks. *Infra*, at 44A.

The treatment of prisoners in the jail was undertaken by the medical staff. These persons were not employed by or under the control of the Shelby County Sheriff or Mayor. They were there as a result of a contractual arrangement with a local hospital to provide medical care and treatment for prisoners in the jail. Leach's own account involved only the jail medical staff, not the jail security staff under the control of the Sheriff. *Infra*, at 16A-20A.

There was no evidence that the Sheriff or Mayor knew about Leach's treatment or in any way supported the medical staff's treatment of him. *Infra*, at 12B-13B.

The District Court found that "there was evidence of numerous instances of abuse of paraplegic or physically infirm inmates . . . (A medical corpsman) testified that the same type of treatment provided (Leach) . . . was provided to at least 14 other paraplegics since the new jail was opened." *Infra*, at 51A. The facts do not support this finding. The medical corpsmen indicated that up to sixty paraplegic and quadraplegic prisoners had been in the jail and none had filed any complaints. No proof of any other complaints was presented. See testimony of medical corpsmen *Infra*, at 13A-15A, 23A, 25A-27A.

The District Court found that there was deliberate indifference to Leach's serious medical needs and ruled his Eighth Amendment right to be free from cruel and unusual punishment had been violated. Deliberate indifference was found because the medical corpsmen did not

carry out the orders of a doctor for Leach's care. *Infra*, at 49A. He was awarded \$10,000.00 damages. *Infra*, at 53A.

The Court made no specific finding that a custom or policy of the Mayor or Sheriff was responsible for Leach's treatment. *Infra*, at 10B. Rather, the Court based liability on the reasoning set out in the District Court's opinion in *Brandon v. Allen*, 516 F.Supp. 1355, 1361 (W.D. Tenn. 1981), *aff'd in part and rev'd in part*, 719 F.2d 151 (6th Cir. 1983), *rev'd on other grounds sub nom, Brandon v. Holt*, 469 U.S. 464 (1985). It held that "a supervisor employee, such as the Sheriff, can be liable for the actions of a subordinate when the supervisor knew, or *should have known*, of the danger of a subordinate depriving an individual of a constitutional right." (Emphasis added) *Infra*, at 50A.

The Sixth Circuit affirmed. *Leach v. Shelby County Sheriff*, 891 F.2d 1241 (6th Cir. 1989). It held that in an official capacity suit, a suit against local government officials was actually an action against the local government. Plaintiff must prove some "policy or custom so attributable to the municipality as to render it responsible for payment of the damages found." The Court first held that the Sheriff should have known of the widespread violations involving treatment of paraplegics, even though he had no actual knowledge of their treatment. The 14 apparent incidents of paraplegic mistreatment were held sufficient to create a custom or policy, and hence liability. Next, the Court held that the failure of the Sheriff to investigate and punish any wrongdoers amounted to a "ratification of the illegal acts." Finally, the Court held that the contracting out of medical services did not relieve the Sheriff of liability for the medical treatment of prisoners in his jail.

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## REASONS FOR GRANTING THE PETITION

Beginning with *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978), this Court has defined the modern parameters of municipal liability under 42 U.S.C. 1983. Taking the express language of 1983, *Monell* held could be no municipal liability on the basis of *respondeat superior*, but rather only for a constitutional deprivation pursuant to governmental policy or custom.

" . . . a local government may not be sued under 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under 1983."

*Id.* at 694. Not only must a custom or policy be shown, there must be an affirmative link between them and the constitutional deprivation, *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985), such that they are the "moving force" of the deprivation. *Polk County v. Dodson*, 454 U.S. 312, 326 (1981).

The affirmative link requirement in *Tuttle*, implies that the municipality have some knowledge of the offending custom or policy and its consequences. Only then could the municipality be shown to have acquiesced in or implicitly approved the custom. *Jones v. City of Chicago*, 787 F.2d 200, 204 (7th Cir. 1986). The instant case held a municipality liable without knowledge of the offending policy or custom. This holding clearly goes beyond previous rulings on municipal liability and flies in the face of reason.



Proof of a single incident is not sufficient to show a custom. *Tuttle, supra*, at 821. If however, the single violation is the product of an unconstitutional custom or policy, liability may be shown. *Pembaur v. City of Cincinnati*, 465 U.S. 469, 480-81 (1986). Proof of fault must be proved beyond mere negligence. *See, Daniels v. Williams*, 106 S.Ct. 662 (1986). The instant case showed only how Leach was treated. While reference was made to 14 other paraplegics, no proof of complaints by any of those persons was presented; hence, there was proof of only one incident.

This Court has never addressed the specific issue of whether a policy or custom can be shown based on the inaction of the government when it should have known of widespread unconstitutional conduct, without a showing of actual or constructive knowledge of the abuse. *See, Brandon v. Holt*, 469 U.S. at 473, fn. 25; *Rizzo v. Goode*, 423 U.S. 362 (1976). Such a standard bespeaks negligence, not a constitutional deprivation.

The Court's holding is more typical of negligent retention of an employee in an action against supervisory personnel in their individual capacities. *See, i.e., Kostka v. Hogg*, 560 F.2d 37 (1st Cir. 1977). "Mere negligence in permitting the continued employment of personnel, however, does not rise to the level of 'action pursuant to official municipal policy of some nature (which) caused a constitutional tort.' " (Citations omitted) *Zanghi v. Village of Old Brookville*, 752 F.2d 42, 45 (2nd Cir. 1985).

"There is no evidence that the Sheriff actually knew or supported the corpsmen's actions toward leach. Therefore, this is a situation where the Sheriff *should have known* and acted.

Such a requirement implies an affirmative duty to know and act." (Emphasis added)

*Leach v. Sheriff, supra*, at 1247.

A custom or policy can be proved if it can be shown that the unconstitutional practices were widespread and persistent. *Monell, supra*, at 691; *Adickes v. S.H. Kress*, 398 U.S. 144, 167-68 (1970). This implies more than merely showing the existence of a series of events; knowledge on the part of the municipality must also be shown. The Sixth Circuit failed to find that the Sheriff had any knowledge of Leach's treatment or of past alleged mistreatment of paraplegics. Absent such a finding, the Court imposed an onerous burden on the municipality and one that was beyond previous holdings of this court.

The *Leach* court stated,

"The policy involved here is one of deliberate indifference to the medical needs of paraplegics and physically incapacitated prisoners in the Shelby County Jail. The manifestation of this policy here has two aspects: first, the Sheriff failed to supervise his employees adequately when he knew or should have known of the danger that inmates such as Leach were likely to receive inadequate care and second, the Sheriff failed to investigate this incident and punish those responsible, in effect ratifying their actions."

*Leach, supra*, at 1247. The distinction between these two "policies" was noted in *Spell v. McDaniel*, 824 F.2d 1380, 1389 (4th Cir.), cert. denied *sub nom, City of Fayetteville v. Spell*, 108 S.Ct. 725 (1987). As to the first, the Court said,

" . . . , the specific deficiency or deficiencies must be such as to make the specific violation

'almost bound to happen, sooner or later,' rather than merely 'likely to happen in the long run.' " (citations omitted).

824 F.2d at 1390. As to the second policy, the Court stated,

"Municipal fault for allowing such a developed 'custom or usage' to continue requires (1) *actual or constructive knowledge of its existence by responsible policymakers*, and (2) their failure, as a matter of specific intent or deliberate indifference, thereafter to correct or stop the practices. Constructive knowledge may be inferred from the widespread extent of the practice, general knowledge of their existence, manifest opportunities and official duty of responsible policymakers to be informed, or combinations of these . . .

"A sufficiently close causal link between *such a known but uncorrected custom or usage* and a specific violation is established if occurrence of the specific violation was made reasonably probable by permitted continuation of the custom." (Emphasis added)

*Id.* at 1391.

In *Leach*, the Sixth Circuit found a policy and custom based upon both these theories, but without making a finding that the Sheriff had actual knowledge of the wrong. While a corpsman may have testified about 14 other incidents of mistreatment of paraplegics, *Leach, supra*, at 1247, there was no evidence that any of those persons filed complaints or otherwise set in motion a series of events that would lead to a finding that the Sheriff had constructive notice of paraplegic mistreatment. In effect, the Sixth Circuit held the Sheriff, and hence the County, liable for failing to supervise and

condoning actions about which he had no actual or constructive knowledge. Not even the event complained of was shown to have been known by the Sheriff. If the Sheriff had received any indication of Leach's treatment, it would have come from the Department of Human Services investigator, who gave Leach a clean bill of health and reported no complaints of mistreatment by Leach or his cellmates.

There is no question but that the Sixth Circuit's decision was based on prior knowledge. The District Court decision in *Brandon v. Allen, supra*, was based on prior complaints received by the police and testimony of the general reputation of the police officer. On the ratification issue, the court relied upon *Marchese v. Lucas*, 758 F.2d 181 (6th Cir.), cert denied, 480 U.S. 916 (1987). Knowledge of a wrong, and a failure to act in face of that knowledge, was the basis of *Marchese*. A judge ordered the Sheriff to investigate complaints a prisoner made that he was beaten up. Condonation was implied when the Sheriff, in face of the court's order, failed to act or take corrective or disciplinary action.

No finding of prior knowledge under either theory is present in this case. The "should have known" standard adopted by the Sixth Circuit is clearly a negligence standard, not a constitutional one.

Ratification is a concept under the law of agency. It is an affirmation of a previous act by one acting on behalf of a principal. There cannot be an affirmation, if the principal is ignorant of the facts involved in the original transaction. If one is unaware of the facts, he cannot affirm. Restatement, Agency 2d, Sec. 91. While it is possible to

affirm without acting. *See*, Restatement, Agency 2d, Sec. 94, comment a., when inaction acts a ratification, there must be some knowledge on the part of the principal of the wrong, and a manifestation of approval through a failure to act.

The Sixth Circuit found the Sheriff liable even though the treatment of Leach was by the jail medical staff, who were not employed by or under the control of the Sheriff. *Leach, supra*, at 1248-50. Under Tennessee law, *See, Willis v. Barksdale*, 625 F.Supp. 411 (W.D. Tenn. 1985), and under this Court's recent decision in *West v. Atkins*, 487 U.S. 42 (1988), it was held that contracting out the medical function did not relieve the Sheriff of his obligation to provide at least minimal constitutional standards. The constitutional infirmity was the deliberate indifference to Leach's medical needs. The proof was that Leach should have been cared for by the medical staff, as per the doctor's orders. The Sheriff had no knowledge of his treatment, nor was it shown that he had knowledge of other deficiencies in the care of paraplegics generally. The perpetrators of the wrongs were the medical staff, who were not under the control of or employed by the Sheriff. The proof is therefore totally devoid any causal connection between the medics' actions or inactions, and how the Sheriff was the "moving force" of this "policy." *Supra*, at 6.

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## CONCLUSION

This Court should grant the petition because the Court of Appeals has decided an important issue that

goes beyond the holdings of this Court and is in conflict with decisions of other federal appeals courts. Municipalities require a clear statement of the basis of their liability so they can be guided in the management of their affairs.

Respectfully submitted,

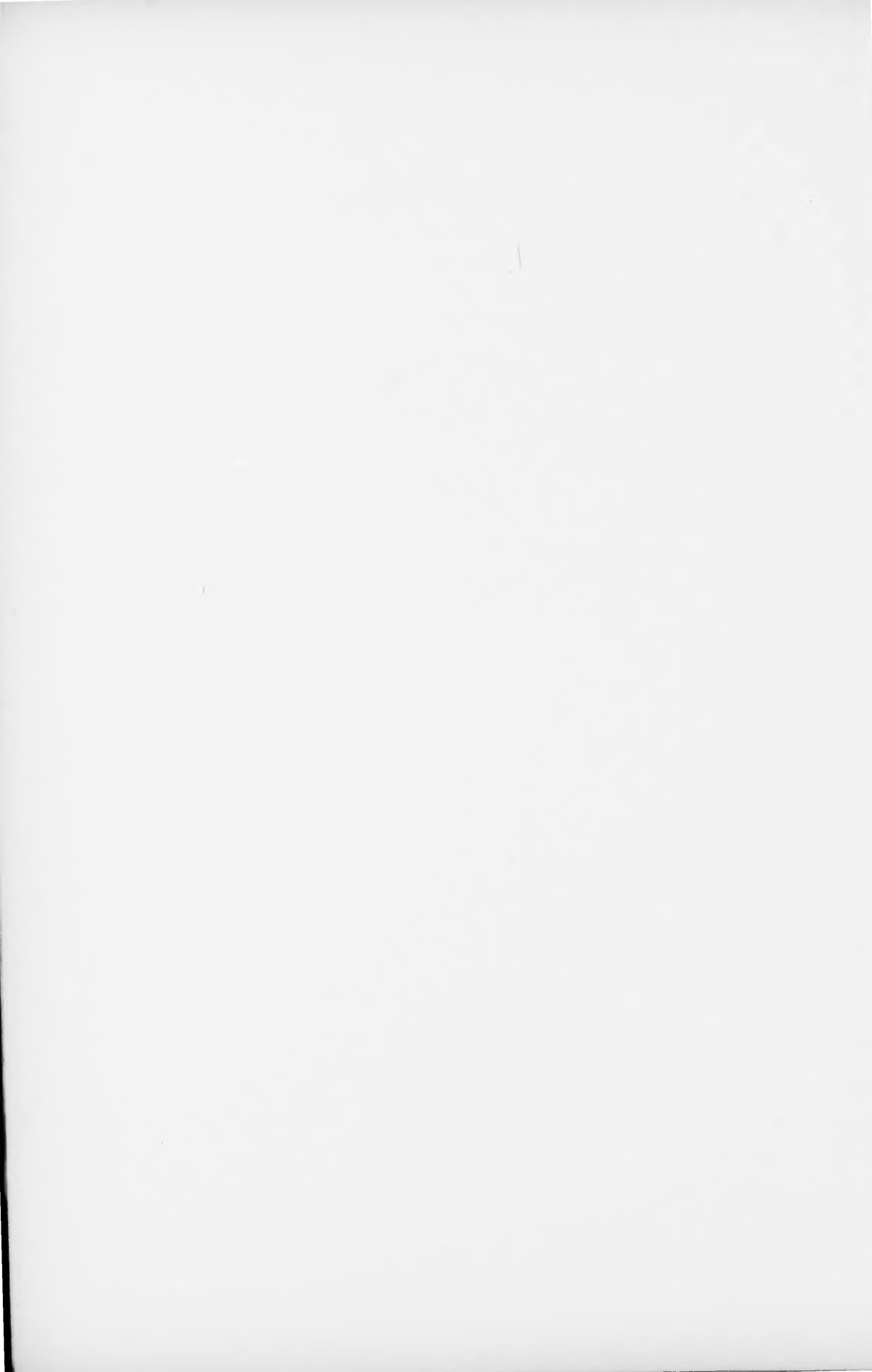
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APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

LARRY M. LEACH

Plaintiff,

V.

EUGENE BARKSDALE, as  
Sheriff of Shelby County,  
and BILL MORRIS, as Mayor  
of Shelby County,

Defendants.

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CASE NO.  
83-2745 H

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MEMORANDUM AND ORDER  
GRANTING JUDGMENT TO PLAINTIFF

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(Filed Sep 23, 1987)

This lawsuit is one in which a state prisoner, Larry. M. Leach, plaintiff, charges officials in the Shelby County Jail, Memphis, Tennessee, were deliberately indifferent to his serious medical needs while he was confined in that jail from July 30, 1983, to September 11, 1983.

Larry Leach was convicted in the Criminal Court of Shelby County, Tennessee, of the offenses of aggravated kidnapping and aggravated rape. He was shot by his female rape victim resulting in the paralysis he has suffered since October 21, 1982. He is serving an eighty-three (83) year sentence in the prison hospital at the State Penitentiary in Nashville, Tennessee. In addition to the

kidnapping and rape convictions, he has also been convicted of the offense of attempt to commit a felony. It is therefore obvious Mr. Leach has been convicted of despicable and deplorable crimes.

Evidence presented to the Court during the trial shows that Mr. Leach is a paraplegic who is paralyzed from the nipples of his body down. He has severe mobility problems. His knees stiffen or "freeze up" on him. Without proper care, he is prone to decubitus ulcers which are commonly called bed sores. He is unable to handle many of his basic body functions.

#### Contentions of Plaintiff:

In general, plaintiff contends that while incarcerated in the Shelby County Jail, his serious medical needs were not met. Due to the gross negligence and deliberate indifference of the defendants, Leach claims he was deprived of the right to due process of law under the Fourteenth Amendment and suffered cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States.

Larry M. Leach claims officials at the Shelby County Jail were deliberately indifferent to his serious medical needs during the time he was housed in that facility from July 30, 1983, to September 11, 1983. He claims he was denied basic essentials to provide for his serious medical needs. Mr. Leach is a paraplegic. He is paralyzed from the nipples of his body down. He has the use of his arms. He has severe mobility problems. His knees stiffen or "freeze up" on him. He is unable to handle many basic bodily functions.

He is extremely prone to life threatening bed sores or decubitus ulcers as he is unable to move his body at various pressure points. All medical care in the Shelby County Jail is under the direction of Mr. John Bunso, who is not a physician or nurse, but an ably trained Emergency Medical Technician. Mr. Leach saw a physician only on one occasion during his confinement and that was when he arrived at the jail. At no other time did he see a physician while he was incarcerated in the Shelby County Jail.

When he was carried to the jail, he was placed in a cell on a cot about two feet high. The cot did not have a proper mattress. Because he must turn in bed to prevent bed sores, an appropriate bed is a hospital or king or queen size bed. A jail cot was not an appropriate bed for a paraplegic. Leach must make transfers back and forth from bed to chair. It is very difficult going back and forth from a wheel chair to a bed.

While in jail, Mr. Leach was assisted by inmates. The first ten days he was in jail, Leach was on a mattress about 1 1/2" thick. Its vinyl covering caused pressure problems which lead to bed sores.

Mr. Leach did not receive a bath until he had been in the jail nine or ten days. This lack of a bath aids the breakdown of skin and causes bed sores. Mr. Leach could not use the tub in his cell. Mr. Leach must evacuate his bowels every two days. He could not get on a commode. Though he had bowel training, he did not have suppositories. He had problems with catheters. He was constantly wet in his own urine during his stay in the jail. There

was another prisoner in his cell who had to lie in his own body excretions unattended in the jail.

After Mr. Leach had been in the jail about ten days, everything changed. This change in his level of care occurred because a complaint had been made by his parents to the Tennessee Department of Human Services. After about ten days, the personal care of Mr. Leach became the responsibility of Howard McClatcher, an inmate, who provided care as well as he could. Leach developed bed sores on his ankles, heel, and sacral area. He had undergone surgery twice for bed sores.

The attitude in the jail was that jail personnel did not want him in the jail. He was ignored and the overall conduct of jail personnel responsible for his medical care was shocking.

#### Contentions of Defendants

In general, the defendants contend Leach was provided adequate and sufficient medical care while incarcerated in the Shelby County Jail and deny that his constitutional rights were violated. Defendants contend the Shelby County Jail is only a pretrial detention center and Leach was moved out of that jail as quickly as he was sentenced.

Defendants contend deliberate indifference to serious medical needs is a relative term. Mr. Leach was not an acutely ill person. He was disabled as a result of a gun shot wound. He did not have daily needs and did not require extensive or intensive treatment. Leach went through a program of rehabilitation and achieved a high

level of independence. He could take care of many of his own needs. He chose not to do so. He was given the level of medical care his condition required.

Issue Before the Court:

The issue before the Court is whether the defendants were deliberately indifferent to the serious medical needs of Larry Leach, a convicted rapist and paraplegic, while he was confined in the Shelby County Jail from July 30, 1983, to September 11, 1983. In the pretrial order, the parties stated the issue in a slightly different way:

Whether the actions of the defendants were gross negligence or deliberate indifference to the serious medical needs of plaintiff.

If the Court so finds, then:

What was the nature and extent of damages to the plaintiff caused by the actions of the defendants.

Larry Leach claims the defendants were grossly negligent and deliberately indifferent to his serious medical needs. The defendants deny they were grossly negligent and deliberately indifferent to the serious medical needs of Leach.

The plaintiff and defendants agreed to the following stipulations.

1. That plaintiff suffered a gunshot wound on October 21, 1982, which transected his spinal cord at the level of T-3.
2. That plaintiff since October 21, 1982, has been a paraplegic from the nipple level of his chest down.

3. That since October 21, 1982, plaintiff has had no sensory or motor function in his body below about nipple level of his chest.
4. That during plaintiff's hospital stays prior to incarceration in the Shelby County Correctional Center (sic), plaintiff developed a severe scar-odecubitus ulcer.
5. That plaintiff was incarcerated at the Memphis, Shelby County Correctional Center (sic) from July 30, 1983, to September 11, 1983.
6. That plaintiff's family presented medical supplies for plaintiff's use to jail authorities on July 31, 1983.
7. That plaintiff was denied the use of a "transfer board" from July 30, 1983, to September 11, 1983.

The overwhelming preponderance of the evidence leads the Court to find and conclude that during the first ten or eleven days of Leach's confinement in the Shelby County Jail, officials in that jail charged with providing medical care to Leach were grossly negligent and deliberately indifferent to Leach's serious medical needs. The Supreme Court of the United States has ruled that a person convicted of a crime is not "wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff v. McDonnell*, 418 U. S. 539, 555-556, 94 S. Ct. 2963, 2974, 41 L.Ed.2d 935 (1974); *Mechum v. Fano*, 427 U.S. 215, 224-225, 96 S. Ct. 2532, 2538, 49 L.Ed.2d 451 (1975). Borrowing the words of Justice Frankfurter, from another context, the conduct of jail officials toward the paraplegic, Larry Leach, "... more than offended some fastidious squeamishness or private sentimentalism . . . " "This is conduct that

shocks the conscience." *Rochin v. California*, 342 U.S. 165, 172 (1951). The Court will enter an appropriate judgment in favor of plaintiff Leach and against the defendants based upon the Court's finding that the preponderance of the evidence shows the defendants were, during the first ten days of Leach's confinement, deliberately indifferent to his obviously serious medical needs.

*Frances Leach*, mother of Larry Leach, testified her son is a paraplegic. He entered Baptist Memorial Hospital Rehabilitation Center, Memphis, Tennessee, in March, 1983, where he remained several months for treatment. During that time, she visited him regularly, at least five times weekly and observed his treatment. She read books pertaining to his treatment which were provided to her by the Center.

He underwent surgery at St. Francis Hospital, Memphis, Tennessee, for a decubitus ulcer located at the base of his spine. After the surgery, he was moved to her home where he remained until about May 25, 1983. At that time, he was admitted to Baptist Hospital in Memphis, Tennessee, for a second surgery to treat the reoccurrence of the decubitus ulcer. From March of 1983 until May of 1983, he had a decubitus ulcer at the base of his spine that would not heal. Rehabilitation center personnel taught Mrs. Leach how to treat that type of ulcer. At the same time, Leach's hips and knees were getting stiffer. Rehabilitation personnel showed her how to prevent that from happening.

Leach underwent the second surgery on or about May 25, 1983, and was discharged from Baptist Hospital to her home on June 6, 1983. The surgery was, she said,



fine, though he was weak. He could sit up about twenty minutes at a time. She said they used a transfer board, a highly polished board which allows a paraplegic to be moved about by sliding. She said Leach was on his stomach a lot. He had to turn often to prevent bed sores. As he gained strength, he could sit up about two hours at a time.

From June 6, 1983, until he entered the jail on July 30, 1983, she assisted her son with bladder and bowel training and in the use of the transfer board. Bowel assistance required his being turned on his left side, placing two pads under him and one on top of him. He was given five or six rubber gloves, lubricant ointment and suppositories. He put on a glove and used his hands to evacuate his bowels. After this process was completed, which required about forty-five minutes, he was bathed and dried by Mrs. Leach. This procedure was followed every other night from June 6, 1983, to July 30, 1983.

Bladder protocol required the use of a catheter which was inserted into the bladder. This required the use of a tray, lubricant jelly, forceps and rubber tube. Leach cleaned himself with a sterile pad and after following a procedure, inserted the catheter, with tube attached into his bladder. Urine flowed through the tube into a plastic tray. From June 6, 1983, to July 30, 1983, this procedure was followed twice daily. Leach wore a catheter during the day and urine flowed into a bag attached to his leg. At night, a larger bag, called a bed bag, was attached to his bed.

For bathing, Leach used a portable hand-held shower. He shaved his upper body. His father washed his back



and lower extremities. He was able to dress himself from the top, such as put on a shirt. He could not reach his feet and thus could not dress at that level.

When he entered the Shelby County Jail, on July 30, 1983, he had no bed sores. The surgical scar was visible. Mr. and Mrs. Leach checked their son at night for bed sores, for pressure points and for spots indicating pressure. When such spots were seen, they were massaged and Leach was turned.

To aid sleeping, pillows were used at night under various pressure points, two at the head, one at the chest, the hips, the knees, and one under and one between his feet.

When the time approached for Leach to enter the Shelby County Jail, Mrs. Leach talked with a man at the jail by phone identified as Ronald Hester. She said this person told her she could bring the various supplies to the jail needed by Leach. She said he told her they did not have those supplies in the jail and those she brought would be used until supplies could be obtained. On August 8 or 9, 1983, she complained to the Tennessee Department of Human Services about the lack of care her son was receiving in the Shelby County Jail.

*Alvin E. Leach*, father of Larry Leach, testified, that from March of 1983, to July 30, 1983, his son, Larry Leach, lived in the family home. He is a paraplegic. He assisted with the care of his son in his home. He obtained special medical chairs for his son's use as he could not get in and out of the bath tub otherwise. One chair fit into the tub and had suction caps on the legs to hold it in place. He also had a commode chair which was placed over the

commode. With the use of the transfer board, Leach could be moved into the shower chair and could use a hand shower. He washed his lower back and lower extremities. He said Leach's decubitus ulcer had healed, even though it was tender. There was only the surgical scar.

He saw his son on Saturday, July 30, 1983, about 4:30 p.m., when he entered the Shelby County Jail. He had a transfer board. He saw his son the following day, July 31, 1983, when he carried medical supplies to the jail, including medications, catheter materials, rubber gloves, urine bags, petroleum jelly and other items. To his surprise, the officer on duty permitted him to visit with his son.

On August 1, 1983, he carried various items of clothing to the jail for the use of his son, such as undershirts, shorts and socks. He next saw his son at the jail on August 6, 1983. He said he looked like he was feeling all right. He did not look sick but he did not look too clean. His clothing was not fresh. A yellow stain was on his socks, which appeared to him to be urine. He did not appear to have had a bath.

*Beverly Lewellen Burress*, sister of Larry Leach, testified she visited her parent's home almost daily. Before Leach entered the jail on July 30, 1983, he was basically in good health. He had recovered from surgery. He was having some difficulty with stiffness in his joints. He was clean.

Mrs. Burress said she visited Leach in the jail on July 31, 1983, and weekly thereafter. She said he seemed to be okay. Later, when she visited him, he did not appear to have had a bath. His hair was greasy, dirty looking. He was wearing socks that had a golden looking stain on

them. His pants were wet in the area of the fly. During later visits, he appeared to be cleaner. On one visit, she noticed his foot had a bandage on it. He told her his leg jerked during the night and his foot hit his wheelchair injuring his foot.

*Howard McClatcher*, forty-five, an inmate trusty at the Shelby County Jail, testified he had been convicted of rape and third degree burglary in 1967 and aggravated rape in 1982. He said he was a trusty at the jail from mid 1982 to 1983. His duties included helping care for paraplegic inmates, cleaning offices, cleaning the jail medical clinic, and run errands and other chores. He said "Dr. Bunso"<sup>1</sup> was in charge of the jail medical clinic along with others identified as corpsmen. He said there were nurses assigned to the jail but they treated female, not male, inmates.

He said he saw Leach once on Leach's fifth day in the jail, which was after Leach's family brought supplies to him at the jail. He said Leach was in a cell which contained iron bunks with a mattress about three inches thick. He said the bunk was lower than Leach's wheelchair, perhaps about ten to twelve inches lower. He said Leach had trouble getting in and out of the bunk and into and out of the wheelchair.

He said Leach requested something to support him for getting out of the bunk into his wheelchair; but, he said, Leach did not receive it. He said he had to help Leach get on and off the steel commode. It was very difficult for Leach to do. He said after Leach had been in

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<sup>1</sup> Mr. McClatcher referred to Mr. Bunson as Dr. Bunso.

the jail about ten to twelve days, he asked "Dr. Bunso" if he could use one of the jail's hospital beds and "Dr. Bunso" said it would be okay to do so.

When he first saw Leach in the jail, Leach was on his jail bunk. His clothes were wet. His bag was wet. A man called "John Doe" was in the cell at the time along with an old man who was in bad shape and could not walk. He said no one knew the old man and no one cared about him.

He said he saw Leach again about the tenth day that Leach had been in the jail. At that time he was assigned to care for him constantly, which he did until he left the jail. Mr. McClatcher said some "pretty strong" people came by and Leach was provided with bedding, pillows, and things relating to Leach's care began to change. The first time he bathed Leach his clothes were in real bad shape from being soiled. His socks were soiled. He helped him with bowel training. Some catheters were too small and there was urine overflow. He said he told a Mr. Joe and Dr. Bunso. Mr. McClatcher said he saw sores on Leach's lower back and a bruise in his "right cheek." He also saw a sore on his right ankle.

McClatcher said once he talked with Dr. Bunso and asked him if he could take care of Leach. Dr. Bunso gave him permission to do so. However, once he said Dr. Bunso responded to a request for Leach by saying:

He's getting everything he wants. What else does he want. He put himself in this shape.

Mr. McClacher [sic] said he saw Leach on the fifth day Leach had been in the jail and he smelled the odor of urine. He said he asked Dr. Bunso if he could place a

mattress from a hospital bed on Leach's cot and was given permission to do so. He said he told Dr. Bunso the cell was filthy and needed cleaning. He said Dr. Bunso responded "rock men" did that and it was not his responsibility.

*Willie C. Matthews*, thirty-three, testified he was confined in the Shelby County Jail in 1983 in L Pod for three or four days and was known as "John Doe." He suffered, at the time, a leg injury and wore a leg brace, though he did not wear the brace in jail as he then had an infected foot. He said he met Larry Leach in the jail and did not know him before that time.

He said he helped Leach out of the wheelchair into bed. Leach complained of wrong size catheters, wet his clothing and constantly complained of his physical condition while he was in the cell. Leach was unable to do anything for himself. He said he did not see any medical corpsmen assist Leach. He said he assisted Leach. During the time he was in the cell, Leach was not taken out of L Pod. He admitted he has been convicted of burglary, attempted burglary and stolen mail offenses.

*Robert Lee Alvord*, Medical Corpsman and trained Emergency Medical Technician, testified he was employed in the Shelby County Jail during 1983. His duties were to provide medical care to jail inmates under supervision of a physician. He said he recalled Larry Leach who was a paraplegic. He said the corpsman staff met to decide what Leach's needs were and discussed his care and physical well being. He said a history was made and Leach was physically observed for injuries and rashes. His medications were discussed. He said Leach had no

complaints about headaches or other pain. He said Leach had no need to see a physician, and there was no reason to take him to a hospital. He said he saw Leach twice daily while working his 8:00 a.m. to 4:00 p.m. shift. He said he saw Leach anytime he wanted, as well as during his regular jail rounds. Mr. Alvold further stated able-bodied men were placed in the cell with Leach in case he needed help.

He said Leach was in a special cell, L Pod. The cell was clean. He never saw it dirty. He said there were no pillows. No one in jail had pillows. Leach was given extra blankets. He said a hospital mattress was supplied Leach on or about the third day he was in the jail.

He said he was responsible for bathing Leach and bathed him about four times during his first few days in the jail. Later he stated he bathed Leach the first time during Leach's third day in the jail. After the first ten days, Leach was bathed by Howard McClatcher, an inmate. He said Leach was taken to the medical area for baths.

An extra supply of clothing and medical supplies were available to Leach as well as additional clothing and supplies for his cell use. He said he checked Leach's catheter for leaks and never saw or found him wet.

Discussing entries on the jail medical record, Mr. Alvold verified the following entries:

*August 2, 1983, Leach given his meds and 9:00 am, given urine bag.*

*August 3, 1983, Two entries - given meds, and one entry by Mr. Bunso.*

*August 4, 1983, given meds this a.m.*

*August 8, 1983, meds given this a.m.*

*August 9, 1983, meds given this a.m.*

*August 10, 1983, meds given this a.m., voiced no complaints.*

*August 11, 1983, no complaints.*

*August 12, 1983, given bath.*

*August 15, 1983, given bath, enema, bowel training, no medical complaints, clean clothing, etc.*

*August 16, 1987, no medical complaints.*

*August 17, 1983, no medical complaints*

Mr. Alvoid admitted the record shows nothing but meds the first ten days Leach was in the jail and that a big improvement started on August 11, 1983. He said he did not always put an entry into the records on everything, but this procedure was out of line with his normal procedure. These entries in Leach's jail medical record show that Leach was given a bath on August 12, 1983, and a bath, bowel training, and clean clothing on August 15, 1983. The Court does not find the testimony of Mr. Alvoid relating to the care of Mr. Leach to be credible.

He said Leach had a bed bag but that Leach was a very uncooperative person. He said it seemed like Leach really did not appreciate the job they were doing for him in the jail with what they had to work with. He said that given the constraints they worked under, Leach was provided for adequately. At the time, he said the jail housed about one thousand inmates. He said he spent about six minutes with Leach in his cell each morning and that was a long visit usually visits were shorter than six minutes.



*Larry M. Leach* testified he is confined in the State Prison Hospital, Nashville, Tennessee, and has been confined there for three and one-half years. He is serving an eighty-three year sentence following convictions for the offenses of aggravated kidnapping and aggravated rape. He was shot by his rape victim and has been paralyzed since October 21, 1982. He said he has been hospitalized twice for surgery to care for a decubitus ulcer condition, first, at St. Francis Hospital for six to eight weeks and thereafter at Baptist Hospital East because the first surgery was not completely successful. He was also hospitalized in the Baptist Hospital Rehabilitation Center for about eight weeks. There he was trained to care for himself to the extent possible, including training in bowel training, getting in and out of a wheelchair, catheterizing himself, sterile procedures, physical/occupational therapy, and training in lifting weights and other exercise.

He said he is paralyzed from the chest down, has no feeling in his legs, the trunk of his body or the hip area. He suffers involuntary muscle spasms. He can do his own bowel training with some assistance on the transfer board and someone making sure he does not fall. Help is required to get pads under his body, get rubber gloves, K-y jelly and suppositories. Afterwards, he needs help in getting the pads from under him and in cleaning this area of his body.

He can shower his upper body with a flexible shower apparatus, shampoo his hair, but cannot shower his lower extremities. The joints of his body stiffen and this causes him considerable problems. He said his joints freeze. He cannot dress his lower extremities but has been trained to



use a dressing stick,, which is about three feet long. It helps him put on a belt, pants and socks to some extent.

After his trial, he entered the Shelby County Jail. He had some clothing in case he suffered an accident. He had a transfer board which is used to slide his body from one area to another. That board was taken away from him when he entered the jail. He saw it again when he was transferred to Nashville, Tennessee, where he does have a transfer board for his use.

When he entered the jail, he saw a person he believed to be a physician who interviewed him and asked him about his physical condition. Leach said he explained what he thought his needs would be. He said he told the physician about his clothing, bowel movements, medications and his physical limitations. The physician took his blood pressure, temperature and talked with him in general and he was then sent upstairs. When he arrived upstairs, he was "dressed out." That is, his street clothing was taken and he was issued color coded jail clothing. He was then assigned to L Pod on the second floor of the jail where he remained during his confinement in that jail.

Leach said the cell in which he was confined had two steel bunks with about a one and one-half inch to two inch fiber filled mattress on it. He had his wheelchair in the cell. He said it was very difficult to get out of and onto the cell bunk from his wheelchair. He said there was about a twelve inch height difference between the two. He was afraid to try the transfer because of the difficulty and because of his two surgical procedures. He said these efforts caused his feet and ankles to bang around quite a bit. He said it would take him ten to fifteen minutes to

get from bed to chair. He attracted attention by banging on his cell door. He said the jail bunk was not suitable to his needs as it was not adequate for rolling or turning. He said he complained time and time again to jail personnel about his situation. Their response, he said, was they did not have items for his needs. Leach testified this was not correct as there was a hospital section in the medical area of the jail with an appropriate bed and adjustable tables and other items. At the Shelby County Jail, Leach said he specifically complained to Dr. Bunso and a corpsman named Joe. He said "Dr. Bunso" told him that was all they had. He said when he received medication, he complained about his hygiene problems. The response he received were usually along this line:

We will have you see the doctor tomorrow.

Wait until later.

We don't know what to do about that.

He said Dr. Bunso was not cooperative at all and seemed not to care whether he had any help. He said the bath tub was too high and he could not get into it. The commode was too low and had no padding on it. He said he had soap. He tore off part of a towel and used it for a wash cloth. He said he could not wash his legs and "rear end."

He said another inmate in the cell named John L. Johnson was in bad shape and jail personnel would not care for him. He was lying on the floor, sick at the stomach, moaning and groaning and lying in his own excrement which Leach called debris and urine.

Leach said he got to see a "real doctor" on or about his fourth day in the jail. He talked with the physician in the office and Mr. Bunso was in another office. Leach said

he told the doctor he was a T-5 complete invalid. The physician put him on an every other day bowel training schedule in bed as there were no facilities for commode accommodation. He said the doctor told Dr. Bunso to let him have bowel movements using suppositories. He said Dr. Bunso told him, Leach, they did not have suppositories and he could use an enema. Finally, he said Dr. Bunso told him to hell with the procedure, sent him back with the promise to take care of it later. He said he had a bowel movement the first time on his fifth day in the jail and again five days later.

Leach said he had problems with his use of the catheter. He wore a leg bag when he was out of bed and had the use of a bed bag when in bed. He said he had problems with wet clothing as the catheter he had was too large and he did not have skin bond cement. He said he repeatedly complained about leg bag/bed bag problems and wetness. He said Mr. Bunso told him you will have to do what you have to do.

He said his mattress was changed after he had been in the jail about ten days. He said he received a bath about the ninth or tenth day in the jail. He said he was filthy from having lain in his own urine and feces. He said he suffered muscle spasms and once injured his foot due to a muscle spasm causing his foot to hit his wheelchair. He said he did not receive any range of motion exercises while he was in the Shelby County Jail.

He said he could not take his socks off. His family washed his socks and inmates washed his underclothing.

He said there was a call button on the wall behind the commode in his cell but he could not reach it. He did

have telephone privileges. He called his family and tried to reach his attorney to tell them he was miserable and feared a reoccurrence of bed sores and the decubitus ulcer.

After he had been in the jail about ten days, a crew of inmates entered his cell with mops, buckets, cleaning materials and cleaned the place from top to bottom. He was given clean clothing. There had been no such cleaning before. Then, he said a man from the Tennessee Department of Human Services or the Health Department visited his cell after complaints made by his mother.

After the visit of that official, his treatment in the jail "turned around one hundred percent." They brought a mattress in. He was given clean sheets and extra clothing. He had a bath for the first time and bowel training which was supposed to be every two days. It got better but never reached the medically prescribed schedule. He was taken to the hospital side of the jail for services. After about two weeks, when the inmate who agreed to help him was transferred, his treatment reverted back to about like it was at first, such as missed medications, baths and bowel training.

The first ten days he was in the jail, his lack of treatment was a mental strain upon him and he said it took a lot out of him physically. He said he experienced frequent headaches and a burning pain sensation in his tail bone area.

On cross examination, Leach admitted he was shot by the victim of the rape he committed and has, in addition to his present conviction for aggravated kidnapping and aggravated rape, been convicted of attempt to commit a

felony. During cross examination, he testified to the following chronology of events.

- 1) From May - 1983 to June 6, 1983, he underwent surgery at Baptist Hospital East for surgical treatment of a decubitus ulcer which had not completely healed from a previous surgery.
- 2) From June 6, 1983, until July 30, 1983, when he entered the Shelby County Jail, he was at the home of his parents in Memphis, Tennessee.
- 3) After he left the Baptist Hospital Rehabilitation Unit from on or about March 25, 1983, to May 25, 1983, he was in the home of his parents.
- 4) He entered the jail July 30, 1983, and remained in the jail for about forty-one days - until September 12, 1983, when he was transferred to the State Penitentiary in Nashville, Tennessee. He is confined in the penitentiary's hospital and has been there three and a half years.

*Captain A. Guasco*, Detention Officer, testified the jail operates a computerized tracking system which records the movements of prisoners within the jail. His testimony related to movements of Larry Mason Leach within the jail from July 30, 1983, to September 12, 1983. While the records showed Leach was returned to his cell on thirty-six movements, there could have been more. Those records show that from July 30, 1983 to August 12, 1983, Leach visited the medical clinic four times, On August 1, 1983, August 2, 1983, August 3, 1983, and August 12, 1983. He said the hospital facility within the jail had never been opened, even though some inmates spend as long as a year in that jail.

*Dr. Albert M. Jones, M.D.*, testified he was employed by the mayor of Shelby County and assigned to the jail part time from July, 1983, until August, 1983. He left his employment with the jail by resigning on August 6, 1983. He said on July 1, 1983 the Shelby County Health Department turned the jail over to the county and the mayor employed him.

He saw Larry Leach the first time on August 1, 1983. He noticed Leach was a paraplegic, spastic with no sensation from the nipple down and posteriorly from the scapula down. His general physical condition was good and he was in no acute distress. He observed no tenderness. There was a surgical scar from treatment of a decubitus ulcer. The skin was intact and he did not need acute medical care. His symptoms related to his paralysis. He noted that on July 31, 1983, Leach was seen by a jail corpsman. He was on a stool softener and a urinary antiseptic. He was not on any medication for pain. He said Mr. Bunso is a corpsman with a very good academic record and may have been first in his class. He was impressed by his ability to handle inmate patients.

He said Leach was not facing any life threatening ailment. He has observed the care of paraplegic patients. They need to be kept clean. An ordinary mattress is insufficient. He did not visit Leach's cell. He saw Leach only once and that was on August 1, 1983.

Dr. Jones said his orders for Leach were for Leach to:

- 1) Return to the clinic daily.
- 2) Receive saline enema in clinic every third day.
- 3) Flush leg bag in dispensary.

Dr. Jones said he never observed these things being done. Dr. Jones said it is very bad for skin to be wet with urine. He said moist feces on skin will cause skin problems depending upon how wet or dry the skin is, and the amount of feces. He said at Oakville Hospital in Memphis, Tennessee, when he was on the staff, paraplegics were bathed daily.

*Joseph Charles Bukewicz*, Corpsman at the jail, testified he served as a U. S. Navy Corpsman First Class for fourteen years. His assignment at the jail was to perform regular medical services to its inmates. He said he saw Leach a few times and talked with him and was familiar with his case and his treatment. He said he did not have a great deal of contact with Leach and was not responsible for his care. He said he did not really treat Leach except once when he put a bandage on his foot and ordered supplies for him.

He said Leach was taken to the infirmary about twice during his first ten days in the jail. He said Leach really did not complain too much. He did not hear him complain about any pain. He testified the first time Leach had a bath was on August 9, 1983. He is not sure he saw Leach during his first ten days of confinement in the jail. He said Leach had been in isolation where there are two to four hospital beds with bath tubs and sinks. He said at the time Leach told him he did not want an enema. He said Leach always had assistance when he bathed. He said "there were always a few people back there." He said when hands-on treatment is provided an inmate, an entry should be made in that inmate's medical record.



*William Sellari*, Supervisor, Department of Human Services, State of Tennessee, testified he was assigned to investigate the complaint about Leach's treatment in the Shelby County Jail. He said the complaint was received on August 9, 1983. He said the complaint reported that Leach was a paraplegic, that he was not receiving adequate care in the jail, had not received a bath in about eleven days and had trouble with internal and external catheter, and was on a plastic covered mattress. The complaint also indicated the physician's orders were appropriate but not carried out. At that point, he said Leach's care had cost the state approximately \$122,401.00.

Mr. Sellari said he went to the jail and saw Leach on August 11, 1983. He said he called the sheriff's office on August 11, 1983. He said his call was referred to an Inspector Battle who was reluctant to discuss the circumstances concerning Leach's confinement. He said he contacted Corpsman Bunso who was somewhat irritated. He said he went to the jail, talked with Leach but did not find any evidence of neglect. He said Leach's clothing were clean, the sink in the room was clean, Leach had been recently bathed. There was no odor or visible evidence of feces or urine. There was no condition of decubitus ulcer or bed sores on Leach. Two men in the cell said both received plenty of food to eat. He noted there was air conditioning and a color television in the cell. He said Mr. Bunso gave information that Leach was receiving adequate medical care. He said Leach was concerned about his bowel training, getting that training started, and he wanted more bowel training and medical attention.



*John Joseph Bunso, Jr.*, Chief Hospital Corpsman, testified he has been with the Shelby County Jail since September 16, 1969. He has had extensive training as a corpsman and Emergency Medical Technician. He has served in various U. S. Navy hospitals and medical facilities. He said his duties in the jail relate to anything that has to do with medical treatment. He said the Shelby County Jail has an infirmary and a hospital area in the rear of the infirmary. He said the hospital area for monetary reasons has never been used. He said the cell pod Leach was in is different from other cells. It is designed especially for paraplegics. It has two bunks about fifteen inches from the floor, commode with bars, an emergency bell within arms reach and the tub is equipped with bars. He said there were no pillows in the jail, but when and where pillows were needed, blankets were substituted.

He said he first saw Leach on August 1, 1983, when Leach was seen by Dr. Albert M. Jones. He said Leach was taken to baths in the hospital isolation area. He said he was bathed at least twice in his first ten days in jail. He was also taken to that area for enemas. He said Leach received a hospital mattress within his first three or four days in jail after he complained about his mattress. He said Leach's wheelchair came to the top of his, Bunso's knee cap - about twenty-two to twenty-four inches.

He said Leach always had access to his external catheters and rubber gloves. His father did bring items to the jail for Leach's use. He said Leach used eighty-seven catheters in forty-four days. He was given four blankets to use as pillows. He had a linen drawer which had twelve sheets, six towels and four or five sets of clothing. He said Leach was in the infirmary August 1, twice

August 3, August 4, August 5, August 8, August 10, August 18, 1983. He saw him in the infirmary every time he was there. He was there almost daily to use the telephone. Leach was provided refreshments and allowed to use the phone as long as he desired. His clothing was in fair shape a majority of the time. It is possible he was wet at times with urine. It happens to everyone who wears a bag. He said Leach needed close attention when he entered the jail as he appeared depressed. After seven or eight days, he assigned inmate trusty Howard McClatcher to help him. Before this medical staff assisted Leach.

Mr. Bunso said he could not recall if Leach asked for a transfer board but stated he did not need it anyway. Bunso stated sixty to eighty paraplegics formerly housed in the jail never needed a transfer board. Thus, he questioned, why should one be needed by Leach.

Mr. Bunso said Leach hardly ever complained. The only complaints came from his parents which was just about every day. They thought he should be in a hospital. Leach was thankful for the treatment he received. If Leach needed to go to the hospital, he would have been sent. He did not need hospital care. He had no temperature, drowsiness or headaches. There was always someone assigned to L Pod with Leach.

On cross examination, it was established that the tracking system does not show Leach was in the infirmary on the days Bunso claims.

Mr. Bunso admits he became agitated by Mr. Leach's father calling him and complaining he (Bunso) was not doing his job.

*Danny McCain* testified he served as a corpsman in the Army for three years, in the Air Force for eight years and at the Shelby County Penal Farm for three years. He is a trained Emergency Medical Technician and has been on the job at the Shelby County Jail for five years. He said he worked the 4:00 p.m. to 12:00 midnight shift at the jail in July/August, 1983. He became acquainted with Leach because he was a paraplegic. He saw Leach at least one time on every shift he worked when Leach was in the jail. To obtain his services, Leach only had to summon a guard on the floor and he would see him immediately. He entered L Pod nightly. It was a cell with two beds. The cell was kept clean. He would check to see if Leach was clean. He did not see Leach in an unclean condition. He gave Leach medications. Leach had no complaints about his condition. On one occasion Leach told him he needed a bowel movement and he took him to the infirmary for that purpose. He said Leach was given a hospital mattress the second or third day he was in the jail. The jail has pillows which are of a regular size. He did not recall if Leach had any extra blankets. He said Leach never complained to him about pain in his lower back area. He said he gave Leach a bath on September 1, 1983 and his catheter was changed. He checked Leach's bed bag at night to guard against leaks. He said Leach would not permit them to give him an enema. He preferred the digital procedure. He only saw Leach at night during Leach's first ten days in the jail. He said Leach was one of the most independent of paraplegics.

Testifying as a rebuttal witness, inmate trusty Howard McClatcher said he placed the mattress in Leach's cell with the consent of Dr. Bunso. He said he asked Dr.

Bunso about it who said it was a good suggestion. That was after Leach had been in the jail about ten days.

Testifying about the cell button, Mr. McClatcher said there was a call box on the wall but he never knew it to work. He said Leach got assistance by banging on the door of his cell. McClatcher said he never knew of anyone who obtained medical assistance by using the wall call button.

Leach produced several letters which he testified were written by him during the relevant times under consideration in this case. He was permitted to read these letters to refresh his recollection and testify to events thereby refreshed in his mind. One of the letters is dated August 2, 1983, and post marked August 3, 1983. In this testimony, in rebuttal, Leach said he had contact with Mr. Bunso on August 2, 1983, about his need for an enema. He said Mr. Bunso said it was getting late, to take him back to his cell, they were not going to do it that day. Leach said it appeared to him Mr. Bunso was obstructing his medical needs.

He wrote a letter to a person named Rheinback on August 10, 1983. He testified he had been in the jail eight or nine days without a bath. He said he cleaned himself to the best of his ability. He said that by August 8, 1983, he had gone five days without bowel training. He felt bad, suffered headaches, things were just not going well for him. He had a bowel training about August 3 or 5, 1983.

He said that on August 9, 1983, he wrote a letter to his mother and had a real surprise for her. He said he finally had a bath and bowel training that day.

As the Court stated earlier in this memorandum, the overwhelming preponderance of the evidence leads the Court to conclude that during at least the first ten days of Leach's confinement in the Shelby County Jail, jail personnel responsible for his care were deliberately indifferent to his serious medical needs. Leach, a paraplegic, entered the jail July 30, 1983. On about August 9, 1983, Mrs. Leach complained to the Department of Human Services about her son's condition in the jail. When a representative of that department contacted the jail to inquire about Leach's condition, that contact set in motion a series of events. A crew of jail inmates cleaned the jail cell in which Leach was confined. Leach was bathed and provided with clean clothing. His medical care dramatically improved. Apparently, there was a delay before Mr. Sellari, the department representative, was allowed to visit Leach. It was during this delay time when it appears the cell cleaning and bathing of Leach occurred. Mr. Alvoid's testimony that he bathed Leach about four times during Leach's first few days in jail does not comport with the evidence. While there is conflicting testimony, the jail medical record shows Leach received a bath August 12, 1983. These jail medical record entries corroborate the testimony of Frances Leach, Alvin Leach, Beverly Lewellen Burress, Willie C. Matthews and Howard McClatcher that jail personnel were deliberately indifferent to Leach's serious medical needs. The Court detected an underlying attitude of hostility by Mr. Bunso and Mr. Alvoid toward Mr. Leach. They did not carry out the orders of Dr. Jones for Leach's care. Mr. Alvoid said Leach was a very uncooperative person and, it seemed to him, Leach did not really appreciate the job they were

doing for him with what they had to work with. Mr. Bunso admitted he was agitated by Mr. Leach's father's complaints.

This Court can understand that Leach presented jail medical personnel with a distressing situation. The demands upon their time and resources by a paraplegic can be distressing to a small medical staff in a jail having over 1,000 inmates. The Court can understand why jail personnel may be unsympathetic with a paraplegic convicted of aggravated kidnapping and aggravated rape. The Court can understand why Mr. Bunso may have said that Leach put himself in the shape he was in. Federal law, however, requires that those who are responsible for an inmates medical care cannot be deliberately indifferent to that inmate's serious medical needs. The deposition testimony of physicians show the level of minimum care for a paraplegic was not provided Leach. Failure to provide that care was deliberate and indifferent. This deliberate indifference violated Leach's constitutional rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States.

Having made its own independent findings and reached independent conclusions in this case, based upon a preponderance of the evidence, the Court adopts the following findings and fact and conclusions of law presented by plaintiff:

#### Larry M. Leach's Medical Condition and Needs

Plaintiff Larry M. Leach, presently a prisoner at Central State Penitentiary in Nashville, Tennessee, was shot on April 20, 1982. The gunshot wound transected his

spinal cord at the level of his spine, T-3 and rendered him paralyzed from the nipple-level of his chest down. (Stipulations, Nos. 1 and 2, Pre-Trial Order). As a paraplegic, Mr. Leach has no feeling or muscle control in his legs, hips, or trunk. (Toomes, Dep. 8-9). After being shot, Plaintiff was treated for several months in various local hospitals. During Plaintiff's hospitalization prior to his incarceration at Shelby County Jail, Plaintiff developed a severe sacrodecubitus ulcer. In May of 1983, this ulcer was repaired by surgical procedures performed at Baptist Hospital East by Dr. Thad Ferrell.

On July 30, 1983, Plaintiff was found guilty of aggravated rape and kidnapping. He was immediately held to the custody of the Tennessee Department of Corrections and incarcerated at the Shelby County Jail to await sentencing. Plaintiff was incarcerated at the jail from July 30, 1983, until September 11, 1983, at which time he was transferred to the Central State Penitentiary at Nashville. Plaintiff's treatment during his incarceration at the County Jail is the subject matter of this litigation.

Prior to entering Shelby County Jail, Plaintiff received rehabilitation at the Spinal Cord Injury Center of the Baptist Hospital Lamar Unit. At the Center, Plaintiff received physical therapy, occupational therapy, bowel and urine training, and mobility training.

Upon discharge from the Spinal Cord Injury Center, Plaintiff could perform his own catheterization (urine removal) and "bowel training"; he could get in and out of his wheel chair with the assistance of a slide board; and, he could dress himself except for his lower extremities.



"Bowel training" is the only means whereby Plaintiff can evacuate his bowels and it requires the use of suppositories and "bowel training" pads in a clean and hygienic surrounding. Bowel training is brought about through digital stimulation. (Requests for Admission, No. 9). Further, during the period of July 30, 1983, to September 11, 1983, Plaintiff's condition required, consistent with sound medical treatment, that he be permitted to perform "bowel training" every other day with the aid of suppositories. (Requests for Admissions, No. 10).

After discharge from the Spinal Cord Center in March, 1983, "bowel training" was performed by Plaintiff with the assistance of his mother. Plaintiff would lie down on the bed with sterile pads underneath and, with the assistance of surgical gloves, K and Y gel and a suppository, was able to manually evacuate his bowels. Mrs. Frances Leach, his mother, would wash and clean him and assure that no feces remained on his body. Additionally, Mrs. Leach would take the pads and dispose of them. Mrs. Leach testified that the bedsore for which Plaintiff had received surgery was right at the lower tail bone and could easily get feces in it.

Plaintiff also had to undergo manual bladder training. This procedure consisted of two functions. First, he would insert a tube into his urethra and drain his bladder into a container provided by Mrs. Leach. It was extremely important that the instruments and tubes be sterile in order to reduce the possibility of infection. Additionally, Plaintiff had to wear a type of catheter known as a tatecsus catheter which fit on the outside of the penis and was held to the body with a type of epoxy glue to prevent leakage. It was very important that this catheter



be attached to a bag which had to be emptied on a regular basis. At night, the catheter was attached to what was called a night bed bag. This bag was necessarily larger so as to insure there was enough room to contain all of the urine and thus avoid the possibility [sic] of urine running back up into his body. It was also very important that these bags be clean and sterile so as to avoid the possibility of infection.

Plaintiff was unable to get in and out of a bathtub; however, with the assistance of his father and the use of a slide board, Plaintiff was able to get into a shower. In the shower with a flexible hose, Plaintiff was able to wash his hair and parts of his body. He could not wash his legs or feet. The shower had a specially equipped [sic] padded chair to prevent further ulcers.

Larry Leach needed to have special assistance with sleeping. Specifically, it was very important for him to have pillows under various parts of his body so as to assure that he would not put pressure on any part of his body which might cause a pressure sore to develop.

Plaintiff was unable to touch his feet and legs, change socks, or move the lower part of his extremities due to what he characterized as "freezing up" of his hip and leg joints. This stiffness of joints in his hips and legs was noticed at the Baptist Rehabilitation Center on May 12, 1983. (Toomes, Dep. 18-19). The condition worsened prior to admission to the Shelby County Jail.

After his ulcer was repaired in May of 1983, it was difficult for Plaintiff to move about even with the aid of a transfer board. Plaintiff was weak and it was almost impossible for him to move about without the aid of the

transfer board. Mrs. Leach stated that she would often have to move his legs and body to keep him from knocking or hurting his skin. She also testified that since her son was unable to bend down or to reach around to his backside and that she had to assist him in cleaning his pressure sores and cleaning the scars left by the pressure sores. She also had to put on his socks and clean his feet. After his shower, she assisted in drying and dressing her son.

During his trial in Shelby County Criminal Court, Plaintiff was permitted by the judge to have a portable cot in the courtroom. Plaintiff was able to lie on the cot when necessary.

The medical evidence was clear as to the type of care and treatment required for Larry M. Leach. Mr. Leach needed adequate bedding such as a standard hospital bed the same height as his wheelchair seat so that he would be able to get in and out of his wheelchair. The mattress should be firm and the bed sufficiently wide so as to allow him to turn around in the bed. (Toomes, Dep. 14, 24-26). Dr. Toomes noted that a standard jail cot would be unacceptable. (Toomes, Dep. 14). Dr. Toomes further noted that the use of a slide board would be necessary if there was a significant difference between the relative heights of the bed and wheelchair. (Toomes, Dep. 25). A slide or transfer board is often used to assist paraplegics in making transfers to and from the wheelchair. It consists of a piece of smoothly sanded wood or a piece of plastic about 8" to 10" wide and a couple of feet long. It permits an individual to slide on a slippery board in and out of the wheelchair. (Toomes, Dep. 27-28).

When Mr. Leach was discharged from the Spinal Cord Unit, he was informed to do an exercise program which involved range of motion of the joints. This range of motion exercise would be done in bed with the assistance of another individual who would move his legs. (Toomes, Dep. 21). The exercise motion's purpose was to enable Plaintiff to dress his lower extremities.

The doctors are in agreement that a paraplegic such as Mr. Leach should have particular attention paid to his cleanliness. Further, Plaintiff's reasonable medical needs included frequent movement to avoid breakdown in tissues surrounding his bedsores and clean, dry linen to avoid the danger of infection. (Requests for Admission, No. 18). Further, consistent with sound medical practice, Plaintiff was required to frequently move or turn about in his bed and chair in order to avoid further breakdown of his skin and the development of another ulcer. (Request for Admission, No. 6).

Dr. Albert Jones, Defendant's trial expert stated that clean living quarters with adequate padding was essential for the care of Mr. Leach. He further stated that daily bathing of a paraplegic was necessary.

Dr. Barbara Snell was one of the Plaintiff's physicians at the Tennessee State Penitentiary. She stated that the key to preventing the development of ulcers was to keep pressure off certain points by the use of cushions, pads, and turning. She also stated that certain measures regarding health and hygiene were needed to assist paraplegics. (Snell, Dep. 11-12). This treatment includes special attention to cleanliness.

Exposure to urine or feces could cause breakdown in the skin and development of bedsores. (Toomes, Dep. 28). Damp clothing or linen would make the condition worse. Dr. Toomes also indicated that bathing would be necessary at least once a day. (Toomes, Dep. 36). All the doctors indicated that decubitus ulcers can be life threatening. (Toomes, Dep. 37).

Concerning bowel training, Dr. Toomes indicated that it should occur every other day and that catheterization should occur every four to eight hours. (Toomes, Dep. 39).

Having a well-padded mattress and avoiding hard or bumpy beds is also necessary. (Toomes, Dep. 40). Dr. Toomes also agreed that frequent turning over in bed would help prevent bedsores. (Toomes, Dep. 40).

#### Treatment at Shelby County Jail

On July 30, 1983, Plaintiff was placed in the custody of the Sheriff in the Criminal Justice Complex and incarcerated at Shelby County Jail. At the time of his incarceration, Plaintiff had in his possession external catheters and a slide board. The slide board was taken away from Plaintiff, and he was not allowed to have the board while incarcerated. (Pre-Trial Stipulations). The board was returned to him when he was transferred to Nashville. Plaintiff has possessed the slide board while in the state prison and uses it to get in and out of his wheelchair.

On July 30, 1983, Mrs. Leach bathed her son and examined his body. Mrs. Leach testified that the pressure sore which had been corrected by surgery was healed and

that he did not have any pressure sores on any part of his body. Both Mr. and Mrs. Leach testified that they personally examined their son's body on July 30, 1983, and that it was in good condition.

When admitted to the jail, Plaintiff was seen by Ronald Hester. Plaintiff informed Hester about his medical condition and need for bowel training, catheters, his mobility problems, his medication needs, and his numerous physical limitations. (See Jail Medical Charts). Plaintiff was then dressed in a prison uniform and taken to the second floor at L-Pod, where he remained throughout his stay.

On the night of July 30, 1983, Mrs. Leach phoned the Criminal Justice Complex and spoke to Ronald Hester. Mrs. Leach also told Hester that her son was a paraplegic and that he needed catheter supplies, clean clothes, medication, and ointment in order to manually evacuate his bladder and bowels and to insure that pressure sores did not develop on his body. She gathered her son's medical supplies and medications and her husband then delivered them to the Criminal Justice Complex on July 31, 1983.

In L-Pod, there are two steel cots. On top of each cot is a two-inch, vinyl-covered, fiber-filled mattress. One of the cots was Plaintiff's bed during his incarceration. Plaintiff's wheelchair was higher than the cot, which made it difficult for him to get out of his chair into the bed, and nearly impossible to get into the chair from the cot. Plaintiff generally got out of bed with help from other inmates. On one occasion, Plaintiff did manage to get into his chair from the bed, after much struggling and

pain, in order to obtain assistance for John Johnson, an inmate who had been lying in his own feces for hours.

The cot was very narrow, making it difficult for Plaintiff to roll over. The bed was also not sufficiently padded.

From the first day, Plaintiff repeatedly told the jail personnel and the medical corpsmen that the bed was inadequate for his condition. He explained that the bed would break down his skin and create bedsores. He told Corpsman Bunso, the medical director, and other corpsmen that the bed was inadequate. Bunso's response to his request was that the jail did not have any other beds. However, hospital beds were in the jail hospital.

The Defendant's witnesses denied that Plaintiff complained about the cot. Both Howard McLatcher and Willie Matthews heard Plaintiff complain. Further, a hospital mattress was later moved to the cot which indicates that the cot was inadequate. Based upon the testimony as a whole and the demeanor of the witnesses, the Court finds that the cot was inadequate for Plaintiff's needs and that Plaintiff repeatedly complained about this inadequacy. Yet, the Defendant's employees deliberately ignored Plaintiff's legitimate needs and requests.

The Court further notes that Plaintiff has remained in the hospital ward of the State Penitentiary since his arrival at that facility. He sleeps in a standard size hospital bed with a pull bar near a nurses station.

In L-Pod at the County Jail, Plaintiff had woefully inadequate facilities for cleaning. He was given a torn up towel to use as a washcloth. In the corner there was a

small sink which could not be stopped up to retain water. Due to his mobility problems and the inadequate washing facilities, it was impossible for Plaintiff to remain clean.

While there was a stainless steel bathtub, it was totally unsuitable for Plaintiff. He could not sit on the stainless steel, nor could he get into or out of the tub. Likewise, there was a stainless steel toilet which was inadequate for his condition.

During the Plaintiff's first eleven days in the jail, from July 30, through August 9, 1983, his treatment was deplorable. Plaintiff did not have a bed bag for his catheter and as a result woke up every morning wet with urine. Further, Plaintiff was given the wrong size catheter during part of his stay which also caused wetness. Despite his complaints to Mr. Bunso and other corpsmen, Plaintiff received no relief. Plaintiff would often stay wet in his own urine for several hours at a time. He developed skin irritation and constantly smelled of urine. Plaintiff repeatedly complained about this to jail officials and corpsmen. He was informed by Mr. Bunso that they did not have smaller catheters and that he could "get his mother to bring him some."

During the first eleven days, Plaintiff only had one bowel evacuation and that was with the assistance of a jail trustee, Howard "Sonny" McLatcher. Plaintiff stated that during the first ten days he did not receive a bath and described his condition prior to the bath as filthy with skin irritation, bruises and sores on his legs.

Plaintiff was examined by Dr. Ablert Jones on August 1, 1983. Dr. Jones's notes indicate that Plaintiff had no



bedsores, only scars on the buttocks where a decubitis ulcer had been. He prescribed the following treatment for Mr. Leach: (1) continue medication, (2) maintenance of three No. 16 catheters for his use in his cell, (3) return here (clinic) *daily* for catheters and change of external catheters about 9:00 a.m. *daily*, (4) saline enema (1 tsp salt to each quart of water) every third day, (5) regular diet, and (6) flush bed bag *daily* with benedine. (Emphasis added). (See Jail Medical Charts). Dr. Jones testified that Mr. Leach should have returned to the infirmary daily for some of his treatment.

According to Plaintiff, Dr. Jones told Corpsman Bunso about the need for bowel training. Later that day, Bunso indicated "to hell with it (taking care of the bowel training)" and instead instructed that Plaintiff be taken back to his cell and that the bowel training would be taken care of later. Plaintiff did not receive any bowel training until several days later.

On the tenth or eleventh day of his incarceration at the jail, Plaintiff was bathed for the first time by Sonny McLatcher. Prior to this bath, his socks had not been removed or cleaned. His body was dirty. His feet were dirty and the skin on his feet and heels had sores. Plaintiff had been begging for a bath. The testimony concerning Mr. Leach's condition was substantiated by Beverly Burress and Howard McLatcher. Ms. Burress described his condition as unkept, dirty, and his feet appeared to be covered with urine-covered socks.

Defendant denies that Plaintiff was not bathed for ten days. Mr. Bunso testified that he was aware that Leach was bathed at least twice during the first ten days.



Robert Alvoid and Danny McCain stated that they were aware that Leach was bathed during the first ten days. However, neither could recall or identify the day he was bathed.

On the other hand, Willie Matthews and Howard "Sonny" McLatcher indicated that Plaintiff was not bathed during the first ten days. McLatcher stated that on about the tenth day he was instructed by Mr. Bunso to bathe Plaintiff and to assist him in his bowel training. He stated that this was the first bath Leach received. When McLatcher bathed Plaintiff, he observed that his clothing, especially his socks, were soiled and that his skin was irritated and that he had a foul odor. The Court credits the testimony of Mr. McLatcher.

Other evidence corroborates Plaintiff's testimony concerning bathing. The jail maintains an elaborate computerized movement system. According to Captain A. Guasco, Director of Detention, in order to move from L-Pod to the medical infirmary where Leach was bathed, he would have to pass various points and a computer would record the time of his arrival and departure from each point. Captain Guasco identified two computer printouts on Leach's movement while in the jail. (Exhibits 2 and 3). It is clear from the printouts that Leach was only seen in the medical infirmary on three occasions during the first 11 days of his stay. More importantly, the medical records of the jail indicate that Leach received his first bath on August 9 - 11 days after he was incarcerated. This documentation is consistent with the testimony of Leach, McLatcher, and Burress. Based upon all the evidence, including the demeanor of the parties, the Court concludes that Larry Leach was not bathed for several

days despite his great medical need for cleanliness and his repeated requests for a bath. Further, the Court finds that he was forced to remain for long periods of time in his own urine which further risked irritation and breakdown of his skin. Despite Plaintiff's repeated requests for a bath and assistance, the Defendant's employees, particularly the medical director, Mr. Bunso, deliberately denied his legitimate requests.

Likewise, the Court finds that Plaintiff was denied the range-of-motion exercises while at the jail. Plaintiff mentioned to several employees at the jail, including medical personnel, that he needed to perform these exercises. He asked corpsmen, including Mr. Bunso for assistance. Despite these requests, he was never given range-of-motion exercises while in the jail.

On the day Plaintiff was first bathed, a crew of inmates came into L-Pod with mops, buckets, disinfectants, and cleaning supplies. They completely cleaned the cell and gave Plaintiff clean clothing. The pod had not been cleaned before that date. About an hour after the pod was cleaned, a man came to the pod and asked about Plaintiff's problem. Plaintiff believed this individual to be from the Health Department. After the visit from this man, Plaintiff's treatment radically changed for the better.

It is obvious, and the Court so finds, that Mr. Leach's treatment changed only because of a complaint filed by his mother with the Tennessee Department of Human Services. Mrs. Leach had lodged a complaint with the Department of Human Services about the lack of care that her son was receiving at the Shelby County Jail. The

Department of Human Services received the complaint on August 9. On that day, William Sellari, an employee of the Department of Human Services, contacted Defendant Barksdale who referred Mr. Sellari to Inspector Ballard, the Chief Jailer. On August 11, Sellari visited with Ballard who was reluctant to permit an investigation. Sellari was then referred by Ballard to Corpsman Bunso who, according to Sellari, was "agitated" about the complaint. Eventually, a time was set up for Sellari to visit Leach at the jail. After examining and talking to Leach, Sellari concluded that Leach and the other inmate had been recently bathed, were not in their own urine or feces, and that there did not appear to be any abuse. Sellari could not state what kind of condition Leach was in at the time the complaint was first lodged.

Howard "Sonny" McLatcher testified that Mr. Leach's treatment changed shortly before Sellari arrived on the scene. Based upon the testimony as a whole and the demeanor of the witnesses, the Court finds that Mr. Leach's treatment was absolutely deplorable prior to the complaint being lodged with the Department of Human Services. After the Sheriff was notified of the complaint, then, and only then, did conditions change and Plaintiff begin to receive humane treatment.

After the tenth day, Plaintiff's treatment was left to Sonny McClatcher. McClatcher often took Plaintiff to the hospital area, assisted in bowel training, bathed him, change (sic) his clothes, and would often give him orange juice and other items to drink.

During the first ten days, Plaintiff developed sores on his heels and ankle where he hit the iron frame of the cot.

Plaintiff, like other paraplegics, is prone to have muscle spasms which cause his feet to move involuntarily. During muscle spasms he hit his legs on the iron cot. Sonny McClatcher often wrapped Plaintiff's legs to prevent further injury.

The Court finds that prior to entering the jail, Plaintiff's skin was in good condition with no sores on his body. Upon leaving, Plaintiff had sores on his ankles and buttocks. Dr. Barbara Snell was one of the doctors at the Tennessee State Penitentiary when Larry Leach was admitted to that facility in September of 1983. According to Dr. Snell, Leach's condition on September 13, 1983, when he entered the prison hospital, consisted of a decubitis ulcer on his buttocks and a small ulcer on his right ankle. (Snell, Dep. 26). He was given medicine for an infection, in the form of ampicillin, in September and again in October. (Snell, Dep. 29-30). The Court finds that Plaintiff developed these new ulcers because of the deliberate and deplorable treatment he received at the Shelby County Jail.

The treatment afforded Plaintiff at the Shelby County Jail caused him great distress. He did not know when his essential bodily needs would be cared for. He developed a burning sensation on the lower part of his back and frequent headaches, conditions which had not existed prior to his incarceration.

Plaintiff was not the only disabled person treated in this shocking manner. Plaintiff and Sonny McLatcher described the condition and deplorable treatment of other inmates including John Johnson. Johnson, who was Leach's cellmate, had recently been transferred to the Jail

from the Regional Medical Center. Johnson had problems moving and walking. Johnson often remained in his own feces and urine on the floor for hours without any assistance.

Plaintiff stated that Corpsman Bunso had a bad attitude and was very hostile toward him. Bunso refused to permit bowel training of Plaintiff or anyone to assist Plaintiff. On one occasion Bunso told Plaintiff to "get the hell out" of his office. On another occasion, Bunso told Plaintiff that if he needed catheters, he should have his mother get them for him. Mr. McLatcher also observed that Bunso had a negative attitude about Leach. McLatcher stated, "He gets everything, I didn't bring him here. He put himself in this predicament." McLatcher also heard Bunso make negative statements about Leach's cellmate.

Howard McLatcher observed sores on the top part of Leach's buttocks. He had occasion to see the sores when he washed Leach. He also discovered sores on Leach's right ankle.

John Bunso was the medical director of the Shelby County Jail infirmary on July 30, 1983. He was in charge of the medical treatment of inmates at the jail, including Larry Leach.

The jail routine was to have a sick call for all inmates two or three times a day when medication was administered. Further, if an inmate wanted to see a physician, the inmate would complete a medical request form and Bunso would determine whether to allow the individual see a physician.

All the medical care of male inmates was administered by the corpsmen, and the care of female inmates by a registered nurse. The registered nurse was prohibited from treating any males and the corpsmen were prohibited from treating females.

Mr. Bunso denied any mistreatment of Leach. He stated that during the first ten days, Leach was seen in the infirmary almost daily and that he saw Leach almost daily. He stated that it took one or two hours per day when Leach was in the infirmary and that he was given a bath whenever he requested it. The Jail medical records and the printout on Leach's movements seriously discredits this testimony. The Court, therefore, discounts this testimony of Bunso as incredible and self serving.

Bunso also stated that Leach hardly ever complained and did not complain about his care. He stated that Leach was thankful. (*See also*, Bunso Affidavit, ¶10). He stated that Leach never complained about headaches or pain.

When asked if he had said that Leach was the most arrogant paraplegic he ever treated, Bunso stated that he did not make such a statement and, if anyone said that he did, that person would be lying. However, Bunso's own deposition reveals that *he said* that Leach was "the most arrogant paraplegic" and that he had "calmed him down." Bunso also stated at trial that if Leach had been the most arrogant paraplegic, Bunso would never have given him cigarettes and food.

Incredibly, Bunso stated that his affidavit of February 16, 1984, at Paragraph 9, where he stated that Leach had come to the jail with a severe sacrodecubitus ulcer and

that during his incarceration the ulcer was completely healed, was a mistake.

Also, in his deposition, Bunso denied ever talking to William Sellari, the investigator for the Department of Human Services. He indicated on two separate occasions in the deposition that he did not talk to Sellari. However, he admitted at trial that he did indeed talk to Sellari before Sellari visited Leach.

Danny McCain was a corpsman assigned to the 4:00 to 12:00 shift in July through September, 1983. He was the only corpsman on duty during that shift and would administer medication. He stated that he saw Leach during the first ten days of his stay and never found Leach to be dirty. He stated that Leach had a bath during the first ten days. However, McCain's name does not appear anywhere in the medical charts as providing any treatment for Leach during the first eleven days of his stay at the jail. It is noteworthy that nearly every day after William Sellari's visit, an entry was made by McCain concerning Mr. Leach's treatment. McCain's testimony is simply not credible in light of the glaring lack of any entries in Leach's medical chart prior to Sellari's visit.

Robert Alvord was a corpsman at the jail during Leach's stay. He stated that he reported to Bunso for his instructions. At a regular time in the morning, beginning at about 8:15, he administered medication among the nearly 300 inmates to those who needed it. He stated that he gave Leach two blankets for his care and that he bathed Leach approximately four times. He further stated that Sonny McLatcher often bathed Leach. He stated that Leach did have some sores on his body. He also stated



that Leach needed assistance when transferring to and from his bed and on one occasion he assisted him. He stated that they got a mattress for Leach in order for them to make it easier for him to get on and off the cot.

Alvoid admitted medical entries were very important to determine what type of care was rendered and what type of treatment should be prescribed. He admitted that Leach's medical records for the first ten days indicate that Alvoid only gave medication to Leach. The records indicate that the first time Alvoid gave Leach a bath was on August 15, 1983. Alvoid stated that he was not sure when the first day was that he bathed Leach. He indicated that there was no way for him to now determine when he first bathed Leach.

### CONCLUSIONS OF LAW

The parties have stipulated in the Pre-Trial Order that the Court has jurisdiction to hear this action pursuant to 28 U.S.C. § 1343. Plaintiff initiated this civil rights action under 42 U.S.C. § 1983. This cause of action is clearly cognizable under Section 1983. *Estelle v. Gamble*, 429 U.S. 97, 50 L.Ed. 2d 251, 97 S.Ct. 285 (1976); *Westlake v. Lucas*, 537 F.2d 857 (6th Cir. 1976); *Parrish v. Johnson*, 800 F.2d 600 (6th Cir. 1986).

In *Estelle v. Gamble* the Supreme Court recognized that "[r]egardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983." 429 U.S. at 105. The Court noted that deliberate indifference to the serious medical



needs of a prisoner constitutes an unnecessary and wanton infliction of pain proscribed by the Eighth Amendment to the United States Constitution. There is a violation whether the indifference is manifested by a doctor in response to a prisoner's need, by prison guards intentionally denying or delaying access to medical care, or by "intentionally interfering with treatment once prescribed." *Id.* at 104. It is clearly established by a preponderance of the evidence that jail corpsmen, especially Mr. Bunso, did intentionally interfere with the prescribed treatment of Larry M. Leach, and, therefore, their actions constitute deliberate indifference to the serious injury and medical needs of Mr. Leach.

The Court of Appeals for the Sixth Circuit has also recognized that deliberate indifference, no matter how evidenced, constitutes a violation of the Eighth Amendment. *Westlake v. Lucas*, 537 F.2d 857 (6th Cir. 1971); *Parrish v. Johnson*, 800 F.2d 600 (6th Cir. 1986). In *Parrish*, the Court of Appeals had to determine whether facts very similar to those in the present case constituted cruel and unusual punishment under the Eighth Amendment. Two male paraplegics were incarcerated and both men exhibited diminished control over their bladder and bowel functions. They frequently soiled themselves. Assistance in cleaning was often slow and *Parrish*, on a regular basis, was forced to sit in his own feces. Neither man had adequate facilities for cleaning. The Court of Appeals found that these deplorable conditions constituted cruel and unusual punishment for which damages should be awarded.

In *Parrish*, the Court extensively examined the type of damages available for Eighth Amendment violations, and

held that, while general damages are not to be presumed, neither must actual damages always be shown. Rather, the Court adopted a case-by-case analysis in which each act comprising an Eighth Amendment violation should be considered on its own merits. The Plaintiff is not required to show lasting and severe injury to establish a claim for damages under the Eighth Amendment. The Court concluded that a paraplegic prisoner could recover damages for any injury caused by deliberate failure to provide medical care, including recovery for concomitant pain, suffering and mental distress. 800 F.2d 610-611.

In Tennessee, the Sheriff has the "custody and charge" of the County Jail and all prisoners committed thereto. Tenn. Code Ann. § 41-4-101. In addition, the jail is used as "a prison for convicts sentenced to imprisonment in a penitentiary, until they are removed thereto." Tenn. Code Ann. § 41-4-103. Mr. Leach had been found guilty of a felony and remanded into the custody of the Tennessee Department of Corrections on July 30, 1983. During his stay in the Shelby County Jail, Leach was a convicted prisoner waiting to be sentenced and moved to a state facility. Mr. Leach was not a pre-trial detainee. The Sheriff had an obligation under state law to provide him with adequate care. Further, the Sheriff had a constitutionally imposed duty to provide Mr. Leach with adequate medical care.

A supervisor employee, such as the Sheriff, can be liable for the actions of a subordinate when the supervisor knew, or should have known, of the danger of a subordinate depriving an individual of a constitutional right. *Brandon v. Allen*, 516 F.Supp. 1355, 1361 (W.D. Tenn. 1981) *aff'd in part and rev'd in part*; 719 F.2d 151 (6th Cir.

1983) rev'd on other grounds sub nom; *Brandon v. Holt*, 469 U.S. 464 (1985).

In the present case, during the Defendant Sheriff's tenure, a new jail was constructed which included a hospital ward. That ward was fully equipped with hospital beds, tubs, and equipment needed for the care of patients such as Plaintiff. Defendant Sheriff has refused to open the hospital facility. Accordingly, paraplegics such as Plaintiff were kept in substandard facilities with inadequate beds and cleaning facilities. Notably, since Plaintiff's transfer to the State Penitentiary, he has been maintained in a hospital bed, in a ward with adequate facilities and personnel including registered nurses.

It is clear that the Defendant Sheriff Barksdale left the medical treatment and care to the discretion of Mr. Bunso. Defendant Barksdale clearly had a duty under state law to supervise the medical care and treatment of inmates. Further, Sheriff Barksdale was advised by Mr. Sellari of the Leach complaint. The record reflects that Sheriff Barksdale took no action to correct the situation nor to discipline Mr. Bunso for the mistreatment. Finally, there was evidence of numerous instances of abuse of paraplegic or physically infirm inmates. Both John Johnson and Willie Matthews were provided inadequate care and substandard treatment. Mr. Bunso testified that the same type of treatment provided Plaintiff in L-Pod was provided to at least 14 other paraplegics since the new jail was opened. From these facts it is clear that the Sheriff knew, or should have known, about the inferior and

substandard treatment of paraplegics and of the substantial likelihood of a constitutional deprivation. Accordingly, the Court finds that the Sheriff is responsible in his official capacity for the injuries suffered by Plaintiff.

The evidence is overwhelming that the Defendant was indifferent to the serious injury and medical needs of Plaintiff. It is clear that Plaintiff was deliberately and unnecessarily inflicted with wanton pain in much the same manner as the plaintiffs in *Parrish v. Johnson*. Mr. Leach was completely dependent upon the medical corpsmen for his most basic needs. He was denied an adequate place to reside. He was prevented from evacuating his bowels for many days. He was forced to lie in his own excrement, risking further suffering and deterioration of his skin. He was forced to exist in this horrible state for 10 days without a bath. This type of callous and degrading treatment is deplorable and had a serious, adverse effect on Plaintiff. Plaintiff developed new bedsores. He developed sores on his ankles and legs because of the deliberate, unnecessary, and wanton treatment by the Defendants. Upon his arrival at the State Penitentiary, Plaintiff had an infected decubitis ulcer on his buttocks which had obviously developed while at the jail. Finally, Plaintiff was forced to suffer substantial emotional distress by not knowing when, if ever, his basic needs would be addressed. Any reasonable person would suffer substantial mental anguish knowing that his basic health needs were in the hands of persons who exhibited such total disregard for his health. Plaintiff was simply at the mercy of sadistic people. Therefore, the Court concludes that the actions of the Defendants constitute cruel and unusual punishment and that Plaintiff suffered serious

physical and emotional injury as a result of the intentional and wanton infliction of this punishment.

Reviewing this case on its individual merits as required by *Parrish v. Johnson*, the Court finds that the injuries suffered by plaintiff are clearly compensable. Plaintiff was subjected to severe physical injury and the development of additional decubitus ulcers. Further, he suffered severe emotional distress as the result of the defendant's actions. Plaintiff, therefore, is entitled to an award of compensatory damages for the concomitant pain, suffering and emotional distress resulting from the deliberate indifference to his serious medical needs by jail officials the first ten days Leach was in the Shelby County Jail. Accordingly, the Court awards Leach the sum of \$10,000. The claim for punitive damages is denied. The Court is mindful that the cost of Mr. Leach's on-going care is substantial.

It is therefore by the Court Ordered that plaintiff, Larry Leach, is awarded judgment against the Shelby County Sheriff, in his official capacity, in the sum of \$10,000. In addition, the sheriff, in his official capacity, shall pay to plaintiff a reasonable amount for attorney fees and expenses. Plaintiff's counsel is directed to submit to the Court within thirty (30) days from the date of this Order affidavits setting forth reasonable attorney fees and expenses. Defendant sheriff may respond to such affidavits if he chooses, within twenty (20) days after receipt of the affidavits. Since this is an official capacity lawsuit, plaintiff, if he deems it appropriate, may move the Court to amend the pleadings to name the incumbent sheriff as defendant.

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Ordered this 23 day of September, 1987.

/s/ Odell Horton  
ODELL HORTON, JUDGE  
UNITED STATES  
DISTRICT COURT

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## APPENDIX B

RECOMMENDED FOR FULL TEXT PUBLICATION

*See Sixth Circuit Rule 24*

No. 87-6141

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

LARRY M. LEACH,	)	
	)	ON APPEAL from
<i>Plaintiff-Appellee,</i>	)	the United States
	)	District Court
v.	)	for the Western
SHELBY COUNTY SHERIFF and	)	District of
MAYOR OF SHELBY COUNTY,	)	Tennessee.
TENNESSEE,	)	
	)	
<i>Defendants-Appellants.</i>	)	

Decided and Filed December 20, 1989

Before: BOGGS, Circuit Judge; ENGEL\*, Senior Circuit Judge; and McQUADE\*\*, District Judge.

ENGEL, Senior Circuit Judge. The Mayor and Sheriff of Shelby County, Tennessee appeal a judgment of the United States District Court for the Western District of Tennessee awarding Larry M. Leach \$10,000 damages on Leach's claim under 42 U.S.C. § 1983 that the Mayor and Sheriff, in their official capacities,<sup>1</sup> violated Leach's

\* Honorable Albert J. Engel assumed senior status effective October 1, 1989.

\*\* Honorable Richard B. McQuade, Jr., United States District Judge for the Northern District of Ohio, sitting by designation, resigned effective October 1, 1989, but prior thereto had indicated his full concurrence in the result.

<sup>1</sup> Although the findings of the district court refer only to the liability of the Sheriff and not the Mayor, since this is an

(Continued on following page)

eighth amendment rights through their deliberate indifference to his serious medical needs while he was incarcerated in the Shelby County Jail.

# I.

In 1982, Leach, shot by his victim while committing a rape, was paralyzed from his chest down. He was treated in various local hospitals for several months afterward, his treatment including surgical repair of a sacrodecubitus ulcer in May of 1983. On July 30, 1983, Leach was found guilty of aggravated rape and kidnapping. He was immediately incarcerated at the Shelby County Jail to await sentencing. His treatment while at the Shelby County Jail is the subject matter of this litigation.

Before entering the Shelby County Jail, Leach had received rehabilitative care and training. Although able to perform his own catheterization and bowel training with some assistance, he was unable to touch his feet, change his socks or move his lower extremities. To avoid recurrence of the ulcer, he required a firm mattress of sufficient width to permit him to turn around in bed. He also required particular attention to his cleanliness to avoid infection.

The evidence clearly shows that during the first ten days of his incarceration at the Shelby County Jail, Leach's treatment was deplorable. He was given a steel

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(Continued from previous page)

official capacity suit, the entity that is ultimately liable is the County. Therefore the omission or addition of the Mayor in his official capacity is inconsequential here.



cot with an inadequate mattress and it was not until several days after he had arrived at the jail that it was replaced with a hospital mattress. Despite his medical need for cleanliness, he was not bathed for several days. He was forced to remain for long periods of time in his own urine due to inadequate catheter supplies and was given inadequate aid for his bowel training needs despite his repeated requests for help.

On August 9, Leach's mother filed a complaint about her son's treatment with the Tennessee Department of Human services. William Sellari, an employee of the Department, contacted Sheriff Barksdale about the complaint. He was referred to the Chief Jailer and then to Corpsman Bunso who had personal contact with Leach. Sellari visited Leach on August 11 and concluded that he and other inmates had been recently bathed, were not in their own urine or feces and that there did not appear to be any abuse. It was not until after the Sheriff was notified of this complaint, however, that Leach's treatment changed and he began to receive humane treatment.

There is evidence that when Leach entered the Shelby County Jail, his skin was in good condition and he had no sores on his body. Upon leaving, he had sores on his ankles and buttocks. He claimed that his treatment at the jail caused him great distress, that he developed a burning sensation on the lower part of his back, and that he was plagued with frequent headaches.

Following a bench trial, the district court found that Leach's injuries were the result of deliberate indifference

to Leach's medical needs by the jail personnel, in violation of the eighth amendment. The court further determined that there was evidence that other paraplegic or physically infirm inmates at the Shelby County Jail had been similarly mistreated and that, at least in this instance, the Sheriff took no action to correct the situation or to discipline the employees. The court held that the Sheriff in his official capacity knew, or should have known, of the inferior and substandard treatment of paraplegics and that such treatment would deprive an individual of a constitutional right. *Brandon v. Allen*, 516 F. Supp. 1355, 1361 (W.D. Tenn. 1981), *aff'd in part and rev'd in part*, 719 F.2d 151 (6th Cir. 1983), *rev'd on other grounds sub nom., Brandon v. Holt*, 469 U.S. 464 (1985). Accordingly, the court awarded Leach the sum of \$10,000 against the Shelby County Sheriff in his official capacity.

On appeal the Mayor and Sheriff contend that in the context of the events involved, there was no evidence of a "policy or custom" that was sufficient to establish their liability in their official capacities under *Monell v. New York Department of Social Services*, 436 U.S. 658 (1978). Further, they contend that their liability is excused due to having subcontracted away the medical care of the prison inmates, in light of the Supreme Court's recent decision in *West v. Atkins*, 108 S. Ct. 2250 (1988).

## II.

Our review of the record convinces us that Judge Horton's factual findings were not clearly erroneous. The issue therefore is whether these facts support his finding

of liability of the Sheriff under section 1983.<sup>2</sup> The central issue is whether the facts here are sufficient to establish liability of the Sheriff in his official capacity, specifically, whether the facts sufficiently demonstrate a "custom or policy" of the County as required for liability under *Monell, supra*. A second issue is whether, as the defendants argue, liability under *Estelle v. Gamble*, 429 U.S. 97 (1976), can be established where the medical care of prison inmates was subcontracted away by the Sheriff. Our decision on this issue is guided by *West v. Atkins, supra*.

#### A. Section 1983 Liability

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West*, 108 S.Ct. at 2255 (citations omitted). Plaintiff Leach claims that his eighth amendment rights were violated by the deliberate indifference to his serious medical needs during his incarceration at the Shelby County Jail.

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<sup>2</sup> 42 U.S.C. § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court has held that deliberate indifference to a prisoner's serious medical needs by a prison doctor or a prison guard is prohibited by the eighth amendment. *Estelle v. Gamble*, 429 U.S. at 104-05. The district court's findings of fact show that during the first ten days of his incarceration, Leach's serious medical needs arising from his paraplegic condition were deliberately ignored by the Shelby County Jail personnel. These findings are supported by the evidence and are not clearly erroneous. Thus, Leach has satisfied the first requirement of section 1983, that he was deprived of a right guaranteed by the Constitution.

Next, Leach must show that a person acting under color of state law committed the deprivation of his rights. Although the jail personnel were directly involved,<sup>3</sup> they are not named as defendants herein. Rather, Leach sued the Mayor and the Sheriff in their official capacities. The question before this court then is whether the Mayor and Sheriff may be held liable in their official capacities under section 1983 for Leach's damages and what that means in terms of actual responsibility to pay the determined damages.

In 1978, the Supreme Court overruled *Monroe v. Pape*, 365 U.S. 167 (1961), insofar as *Monroe* had held that local governments were not "persons" within the meaning of section 1983 and thus were wholly immune from suit under the statute. *Monell*, 436 U.S. at 690. In *Monell*, the

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<sup>3</sup> Leach's claim is therefore unlike the case of *Parrish v. Johnson*, 800 F.2d 600 (6th Cir. 1986), where the jail personnel themselves were sued for their mistreatment of paraplegic inmates.

Court determined that a municipality is a "person" within the meaning of section 1983 who can be sued directly if it causes a constitutional tort through "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Id.* The Court rejected the doctrine of *respondeat superior* as an infallible bellwether to establish municipal liability. Instead, it determined that "municipalities could be held liable only when an injury was inflicted by a government's 'lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'" *City of St. Louis v. Praprotnik*, 108 S. Ct. 915, 923 (1988) (quoting *Monell*, 436 U.S. at 694). Depending upon the relief sought, a suit under section 1983 normally should be brought against either or both of two defendants: the local public official in his individual capacity and the local government which employs or is sought to be held responsible for the acts of that local public official.<sup>4</sup>

A successful suit against an individual acting under color of law results in personal liability of the individual to the injured party for the amount of his injuries. In this individual capacity, the local public official may prevail on the affirmative defenses of absolute or qualified immunity if they are applicable. See *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). This doctrine and the theories of liability and immunity applicable thereto are not relevant to suits directly against a governmental entity.

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<sup>4</sup> The analysis which follows applies only in the context of "local government units which are not considered part of the State for Eleventh Amendment purposes." *Monell*, 436 U.S. at 690 n.54.

A suit against an individual "in his official capacity" has been held to be essentially a suit directly against the local government unit and can result in that unit's liability to respond to the injured party for his injuries.

Official capacity suits, . . . "generally represent only another way of pleading an action against an entity of which an officer is an agent." . . . As long as the governmental entity receives notice and an opportunity to respond, an official capacity suit is, in all respects other than name, to be treated as a suit against the entity.

*Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985) (citations omitted). In such suits, however, the governmental entity is not entitled to assert the immunity defenses available to individual actors sued in their individual capacities. See *Owen v. City of Independence*, 445 U.S. 622 (1980). Further, before a local government can be held liable for injuries under section 1983, whether the suit is pleaded as an official capacity suit or a suit against the local government, a plaintiff must show that his injuries were the result of some "policy or custom" attributable to the governmental entity. *Monell*, 436 U.S. at 690. As the Supreme Court stated in *Kentucky v. Graham*:

On the merits, to establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right. . . . More is required in an official-capacity action, however, for a governmental entity is liable under § 1983 only when the entity itself is a "moving force" behind the deprivation, . . . thus, in an official-capacity suit the entity's "policy or custom" must have played a part in the violation of federal law.

473 U.S. at 166 (citations omitted).

Because a suit under section 1983 against a defendant "in his official capacity" is equivalent to a suit against the local government entity, provided that the entity receives notice and an opportunity to respond, the prudent course for a plaintiff who seeks to hold a local government entity liable for damages resulting from an allegedly unconstitutional action under 42 U.S.C. § 1983 would be to name in his pleadings the government entity itself. Although the omission is not fatal in light of *Kentucky v. Graham, supra*,<sup>5</sup> the governmental unit was not named here. Notwithstanding the language in *Kentucky v. Graham*, it is a wise course to name the unit specifically to ensure the requisite notice and to provide an opportunity to respond. As Chief Justice Burger noted:

It does not make a fetish out of orderly procedure to say that if a claimant seeks damages from a municipality, this should be done by making it a named defendant; that will assure the municipality has notice and an opportunity to respond.

*Brandon v. Holt*, 469 U.S. at 473 (Burger, C.J. concurring).

Leach's suit against the Mayor and the Sheriff of Shelby County in their official capacities is, therefore, essentially and for all purposes, a suit against the County itself. The issue, therefore, is whether there was a policy or custom so attributable to the municipality as to render it responsible for payment of the damages found.

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<sup>5</sup> There is no dispute that the County, although not a named party here, received adequate notice and an opportunity to respond.



The district court made no explicit finding regarding the existence of a policy or custom in this case. Rather the court determined that the Sheriff was liable in his official capacity because his failure to supervise the jail personnel indicated his deliberate indifference to the rights of paraplegic inmates at the Shelby County Jail. The court found support for the conclusion of deliberate indifference because the Sheriff knew or should have known that the maltreatment of paraplegic inmates was occurring and, by such indifference, failed to prevent it.

### 1. Supervisory Responsibility

Supervisory liability under section 1983 arises from the Supreme Court's opinion in *Rizzo v. Goode*, 423 U.S. 362 (1976). In *Rizzo*, the Court found that the mayor, city managing director, and police commissioner were not liable for the constitutional violations by the city's police officers because "there was no affirmative link between the occurrence of the various incidents of police misconduct and the adoption of any plan or policy by [the defendants] – express or otherwise – showing their authorization or approval of such misconduct." *Id.* at 371. The Court rejected the idea that supervisory liability under section 1983 could attach on the basis of *respondeat superior* holding that the mere failure to act was not a sufficient basis for liability. Instead, officials should be personally liable in damages only for their own unconstitutional behavior.<sup>6</sup>

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<sup>6</sup> Note that *Rizzo* was decided before *Monell* and therefore, the city was not a party to the lawsuit.



The Supreme Court left open the question of whether a supervisor could be liable for inaction where he or she knew or should have known of widespread violations by subordinates. Our circuit has addressed this issue. "The law is clear that liability of supervisory personnel must be based on more than merely the right to control employees." *Hays v. Jefferson*, 668 F.2d 869, 872 (6th Cir.), cert. denied, 459 U.S. 833 (1982). Further, a claim of failure to supervise or properly train under section 1983 cannot be based on simple negligence. *Id.*; *Daniels v. Williams*, 474 U.S. 327 (1986).

[A] failure of a supervisory official to supervise, control, or train the offending individual [employees] is not actionable absent a showing that the official either encouraged or in some way directly participated in it. At a minimum a plaintiff must show that the official at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending [employees].

*Hays*, 668 F.2d at 874. There is no claim in this case that the Sheriff directly participated in or encouraged the alleged deprivations of Leach. There is, however, at least some evidence that the Sheriff "implicitly authorized, approved, or knowingly acquiesced" in the action of the responsible jail personnel as shown by the fact that it was not isolated or confined to plaintiff Leach and that he failed subsequently to punish the responsible individuals. Court are not required to ignore the fact of life that policies can be and often are subtly but effectively promulgated by seemingly benign conduct.

Thus, we must determine whether supervisory liability, as discussed in *Rizzo*, is a necessary component of

an official capacity suit. We find that an official capacity suit does not require a showing of supervisory liability. Since an official capacity suit is, for our purpose here, a suit against a governmental entity, the allegedly unconstitutional action need only be based on a policy or custom of that entity for liability to attach. While the district court made no explicit finding of a policy or custom, the court's crediting of evidence implicitly made such a finding. While we would not dictate any firm rules as to when a failure to supervise rises to the level of a policy or custom of deliberate indifference, we uphold the finding of such a policy or custom in this case.

## 2. Policy or custom

Under the principles articulated in *Monell*, Leach must demonstrate that his maltreatment was the result of a policy or custom of the governmental entity. The policy involved here is one of deliberate indifference to the medical needs of paraplegic and physically incapacitated prisoners in the Shelby County Jail. The manifestation of this policy here has two aspects: first, the Sheriff failed to supervise his employees adequately when he knew or should have known of the danger that inmates such as Leach were likely to receive inadequate care and second, the Sheriff failed to investigate this incident and punish those responsible, in effect ratifying their actions.

The district court determined that the Sheriff knew or should have known of Leach's deprivations yet failed to correct the situation and was, therefore, deliberately indifferent to Leach's needs. There is no evidence that the

Sheriff actually knew or supported the corpsman's actions toward Leach. Therefore, this is a situation where the Sheriff should have known and acted. Such a requirement implies an affirmative duty to know and to act. The district court found that the Sheriff was under an affirmative obligation toward Leach:

In Tennessee, the Sheriff has the "custody and charge" of the County Jail and all prisoners committed thereto. Tenn. Code Ann. § 41-4-101. . . . The Sheriff had an obligation under state law to provide [Leach] with adequate care. Further, the Sheriff had a constitutionally imposed duty to provide Mr. Leach with adequate medical care.

Further, Tennessee law provides that the Sheriff has a duty to provide adequate food and bedding, maintain cleanliness and provide toiletries and showers. Tenn. Code Ann. §§ 41-4-109, 41-4-111.

Not only was there a duty on the part of the Sheriff to provide adequate care to Leach, but there had been enough similar incidents to put the Sheriff, in his official capacity, on notice that Leach would be subject to constitutional deprivation. The district court found that:

there was evidence of numerous instances of abuse of paraplegic or physically infirm inmates. Both John Johnson and Willie Matthews were provided inadequate care and substandard treatment. [A medical corpsman] testified that the same type of treatment provided [Leach] . . . was provided to at least 14 other paraplegics since the new jail was opened.

These findings are adequately supported by the record here and are not clearly erroneous. Based upon these findings, we agree with the district court's conclusion

that the Sheriff was deliberately indifferent to Leach's needs while he was incarcerated in the Shelby County Jail.

The next issue, then, is whether a municipality can be held liable for damages where the Sheriff's failure to supervise amounts to deliberate indifference to the rights of persons incarcerated at the jail. Guiding this determination is the Supreme Court's recent decision in *City of Canton v. Harris*, 109 S. Ct. 1197 (1989). In *Canton*, the City appealed a Sixth Circuit decision which held that a municipality could be liable for failing adequately to train its police force where the municipality recklessly, intentionally, or with gross negligence failed to train its officers under circumstances in which a deprivation of constitutional rights was substantially certain to result. The Supreme Court determined that this standard was too broad and instead held that:

the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.

*Id.* at 1204. The Court emphasized that municipal liability was based on the finding of a policy of the municipality and that therefore the deliberate indifference must amount to a policy of the municipality. Noting that it would seem contrary to common sense that a city would have a policy of inadequately training its police force, the Court stated:

it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of

constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city may be held liable if it actually causes injury.

*Id.* at 1205. Given the district court's finding of deliberate indifference by the Sheriff in that at least 14 other paraplegics had received similar deplorable treatment, it is fair to say that the need for more adequate supervision was so obvious and the likelihood that the inadequacy would result in the violation of constitutional rights was so great that the County as an entity can be held liable here for the extent of Leach's determined damages.

Further evidence of a policy of deliberate indifference is found in the Sheriff's failure to investigate this incident and punish the responsible parties. It was the same type of "ratification of the illegal acts" that the Sixth Circuit found to be a sufficient "official policy" of the county and sheriff in *Marchese v. Lucas*, 758 F.2d 181, 188 (6th Cir. 1985), *cert. denied*, 480 U.S. 916 (1987). In *Marchese*, a prisoner who had threatened a police officer was twice beaten while in the presence and custody of the police. The fact of the abuse came to the trial court's attention and the sheriff was ordered to investigate the incident. The sheriff failed to investigate the incident or discipline the officers involved. In a section 1983 action the Sixth Circuit affirmed a judgment for the prisoner against both the sheriff in his official capacity and the County. The court first noted that even though the sheriff was not present during the beatings, because he was sued

in his official capacity, "in that capacity, he had a duty to both know and act." *Id.*

The court concluded that the official policy of the sheriff and the County<sup>7</sup> in that case (1) did not require appropriate training or discipline of the police officers, and (2) would not engender either investigation or sanctions against officers when such an assault occurred. "It is this latter official policy which we also regard as ratification of the illegal acts. . . ." *Id.* On this basis, the court found liability on the part of the County and the sheriff.

The similarities to this case are twofold. First, Sheriff Barksdale is sued here in his official capacity. The district court determined that under state law he had a duty to supervise the medical care and treatment of the prison inmates. Therefore in his capacity as Sheriff, he had a duty to know and act upon this constitutional deprivation. Second, the district court concluded that "[t]he record reflects that Sheriff Barksdale took no action to correct the situation nor to discipline [the employee responsible] for the mistreatment." Thus, like *Marchese*, the Sheriff here ratified the unconstitutional acts. In *Marchese*, such ratification was deemed sufficient to attach liability to the sheriff and the County. We find it equally sufficient in this context.

Consequently, we find that the policy or custom of deliberate indifference to the needs of paraplegic prisoners in the Shelby County Jail is adequately demonstrated

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<sup>7</sup> Note that in *Marchese* the County was a named defendant in contrast to this case. For this reason the court in *Marchese* made an explicit finding of a policy or custom.

in the findings of the district court and supported by the record before us. The Sheriff's failure to supervise and correct the situation in view of the numerous similar incidents and his failure subsequently to punish the responsible individuals is more than sufficient evidence of a policy or custom to render the County liable for Leach's damages in this official capacity suit.

#### B. Contracting Out Medical Responsibility

The Sheriff and Mayor contend that they are not liable for Leach's injuries because, under Tennessee law, the medical care of prisoners at the Shelby County Jail is by contract performed by an outside health care provider. They argue that the facts show that only the medical personnel involved with caring for Leach caused his injuries through deliberate indifference to his needs and because these personnel were employed by a separate entity and not the Sheriff, the Sheriff cannot be liable for their actions.

The Sheriff relies on *Willis v. Barksdale*, 625 F. Supp. 411 (W.D. Tenn. 1985), to assert that Tennessee law does not require the Sheriff to address the unique medical needs of each prisoner but rather is permitted to rely on the county's medical personnel in this area. In *Willis*, the same district court questioned the sheriff's obligation to know and act in a section 1983 action involving the same Sheriff, the same jail, the jail administrator and the County.



In *Willis*, the court recognized that:

The sheriff is an official popularly elected by county residents who has the statutory responsibility for safekeeping all prisoners within the jail. T.C.A. Sections 8-8-201 and 41-4-101.

*Id.* at 414. The case was brought on behalf of a prisoner who died of heat stroke during a heat wave. He had been on medication which made him particularly susceptible to the heat. The defendants were charged with deliberate indifference arising from their failure to know of the deceased's special needs and act upon them. In denying relief against the chief jailer the court explained that:

Here, defendant Coop, as chief jailer, had a duty derived from the constitution, from Tennessee statutory law, and from Tennessee common law, to maintain reasonably safe conditions. Implicit in that duty is some responsibility to confront prisoners' basic medical needs. Towards that end, defendant Coop ordered certain measures to minimize the heat wave's impact on the prisoners' health. Yet Coop's duty did not extend to developing procedures to discover the special medical needs of individual inmates. Tennessee by statute specifically delegates to others the duty to address inmates' specific medical problems. Further, health department employees, not Coop, had direct responsibility for providing medical care, including administering medications, to particular inmates. It was their duty to discover the medical needs of particular inmates and to advise jail administrators of those needs. Absent evidence to the contrary, defendant Coop constitutionally could operate on the assumption that those responsible for providing medical care to particular inmates were discharging that duty properly and that they would communicate to him their professional

judgment about medical needs of prisoners requiring his action.

*Id.* at 417 (footnotes omitted). Later, in addressing a pendent state claim the court elaborated:

Tennessee common law imposes upon the sheriff and his chief jailer a duty to treat prisoners "kindly and humanely." *Hale v. Johnston*, 140 Tenn. 182, 203 S.W. 949 (Tenn. 1918); *State ex rel. Morris v. National Surety Co.*, 162 Tenn. 547, 39 S.W.2d 581 (1931). Tennessee statutory law imposes upon them, in impressive breadth and detail, a multitude of mandatory duties designed to promote the inmate's welfare. By contrast, Tennessee does not impose upon the sheriff or his jailer any statutory duties directly and immediately related to the medical care of inmates. In fact, Tennessee expressly assigns those duties to others. For example, T.C.A. Section 41-4-115(a) states that "[t]he county legislative bodies shall alone have the power, and it shall be their duty, to provide medical attendance upon all prisoners . . . ." Furthermore, T.C.A. Section 41-4-116(c)(2) permits the county legislative body to appoint jail inspectors whose "duties" include the making of "rules and regulations for the preservation of the health and decorum of the prisoners . . . ." Finally, T.C.A. Section 41-4-140(a)(1) directs the Tennessee Corrections Institute to "establish minimum standards . . . for the safekeeping, health and welfare of inmates."

Tennessee law, therefore, did not require defendants to ferret out and address the unique medical needs of each individual prisoner. Tennessee law permitted them to rely upon the county's medical personnel to treat prisoners' medical problems properly. True, it might have been wise for the sheriff or his jailer, consistent with their general common law duty to provide

a relatively safe environment, to establish standard mechanisms by which the medical personnel would communicate effectively with the regular jail staff. However, it was well within their discretion how best to accomplish the task of promoting communication between the jail's medical and regular staffs so as to ensure the physical well-being of inmates with special medical needs.

*Id.* at 421 (footnotes omitted). The Sheriff contends that this excuses him from liability in his official capacity for his deliberate indifference to Leach's needs while he was incarcerated in the Shelby County Jail.

The recent case of *West v. Atkins*, 108 S. Ct. 2250 (1988), sheds some light on this issue. In *West*, a doctor under contract to provide medical services for prison inmates was charged with a violation of section 1983 for deliberate indifference to a prisoner's medical needs in violation of the eighth amendment. The issue in *West* was whether a physician under contract with the State to provide medical services to prison inmates acts "under color of state law" within the meaning of section 1983. *Id.* at 2252. The Court found in the affirmative and also observed that a contrary decision would diminish a prisoner's eighth amendment right "since few of those with supervisory and custodial functions are likely to be involved directly in patient care." *Id.* at 2258 n.12. The Sheriff here claims that this indicates that he should not be held liable in this case as a supervisory employee because the medical care of inmates is the responsibility of the medical personnel and that only they should be liable for the injuries that they cause. Although *West* may support an argument that he is not personally liable as a

supervisor, it does not support any argument that the County should not be liable here. As the court noted in *West*:

Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to vindicate their Eighth Amendment rights. The State bore an affirmative obligation to provide medical care to West. . . .

*Id.* at 2259 (footnote omitted). This indicates that contrary to the Sheriff's contentions, the State (and here the County) retains responsibility despite having contracted out the medical care of its prisoners. Therefore, since the Sheriff is here in his official capacity (and it is effectively the County involved here), the Sheriff is not excused from liability due to having contracted out the medical care.

Finally, the Sheriff's argument in this respect completely ignores the fact that under Tennessee law, whatever may be the personal liability of the medical personnel under *Willis*, the Sheriff still has the responsibility of conforming to at least minimal constitutional standards in providing and maintaining adequate bedding, toiletries and cleanliness. In this case, Leach's sanitary conditions and bedding were deplorable and specific medical care was deplorably deficient. The Sheriff's policy of deliberate indifference to the needs of prisoners like Leach is not excused by a claim of reliance upon the attendant medical staff. Rather, in his official capacity, the Sheriff had a duty to know and to act and his failure to do so in this and other similar cases sufficiently evidences a

policy or custom of deliberate indifference sufficient to establish the liability of the County.

III.

Accordingly, for the reasons stated above, the decision of the district court awarding plaintiff Leach \$10,000 against the Sheriff in his official capacity is AFFIRMED.

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## APPENDIX C

No. 87-6141

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

LARRY M. LEACH,	)	
	)	
Plaintiff-Appellee,	)	ORDER
	)	(Filed
v.	)	Feb. 8, 1990)
EUGENE BARKSDALE, ETC.,	)	
ET AL.,	)	
	)	
Defendants-Appellants	)	

BEFORE: BOGGS, Circuit Judge; ENGEL, Senior Circuit Judge; and McQUADE\*, U.S. District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

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\* Hon. Richard B. McQuade, Jr., sitting by designation from the Northern District of Ohio, resigned effective October 1, 1989.

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ENTERED BY ORDER OF THE  
COURT

/s/ Leonard Green  
Leonard Green, Clerk

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